

**NOMINATIONS OF: DWIGHT P. ROBINSON,
JOHN A. KNUBEL, HALBERT C. DeCELL, III,
ELIZABETH K. JULIAN, KEVIN G. CHAVERS,
JOSEPH H. NEELY, NORMAN S. JOHNSON,
ISAAC C. HUNT, JR., AND ALICIA H. MUNNELL**

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RING

ORE THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

FIRST SESSION

ON

NOMINATIONS OF: DWIGHT P. ROBINSON, OF MICHIGAN, TO BE DEPUTY SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE TERRENCE R. DUVERNAY, RESIGNED; JOHN A. KNUBEL, OF MARYLAND, TO BE THE CHIEF FINANCIAL OFFICER OF HUD, VICE G. EDWARD DeSEVE; HALBERT C. DeCELL, III, OF MISSISSIPPI, TO BE AN ASSISTANT SECRETARY OF HUD, VICE WILLIAM J. GILMARTIN; ELIZABETH K. JULIAN, OF TEXAS, TO BE AN ASSISTANT SECRETARY OF HUD, VICE ROBERTA ACHTENBERG, RESIGNED; KEVIN G. CHAVERS, OF PENNSYLVANIA, TO BE THE PRESIDENT OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, VICE DWIGHT P. ROBINSON; JOSEPH H. NEELY, OF MISSISSIPPI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION, VICE C.C. HOPE, JR.; NORMAN S. JOHNSON, OF UTAH, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION, VICE MARY L. SCHAPIRO; ISAAC C. HUNT, JR., OF OHIO, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION, VICE RICHARD Y. ROBERTS; AND ALICIA H. MUNNELL, OF MASSACHUSETTS, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE LAURA TYSON

SEPTEMBER 29, 1995

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FRIDAY, SEPTEMBER 29, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
*Washington, DC.***

The Committee met, pursuant to notice, at 10:08 a.m., in room SD-538 of the Dirksen Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee).

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. The Committee will come to order.

This morning, the Committee meets to conduct hearings on nine Presidential nominees of important Government positions within the Committee's jurisdiction. We will read these names very quickly, because we have a vote going on.

But, from HUD, Dwight Robinson of Michigan, to be the Deputy Secretary; John Knubel of Maryland to be the Chief Financial Officer; Hal DeCell of Mississippi to be an Assistant Secretary; Elizabeth K. Julian of Texas to be an Assistant Secretary; Kevin Chavers of Pennsylvania to be the President of the Government National Mortgage Association, Ginnie Mae.

From the FDIC, Joseph Neely of Mississippi to be a member of the Board. And, from the SEC, Norm Johnson of Utah and Isaac Hunt of Ohio to be members.

For the Council of Economic Advisers, Alicia Munnell of Massachusetts to be a member.

The Committee is pleased to welcome all of the nominees and their families and friends. I want to welcome also Senator Hatch and Senator Lott, who are here to make formal introduction of the nominees from their States to the Committee.

The Committee will proceed as follows: First, we will have the formal introductions. Second, we will swear in all of the nominees. Then we will call the nominees to the witness table in panels.

Senator Hatch, I welcome you to the Committee and look forward to your testimony.

STATEMENT OF ORRIN G. HATCH, U.S. SENATOR, FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman. I appreciate it.

It's really an honor for me to be able to introduce Norman S. Johnson to fill a vacancy on the Securities and Exchange Commission. I don't think President Clinton could have made a better choice for this position.

Norm has been a securities lawyer since he first served at the SEC as a trial lawyer back in 1967. So, for almost 30 years he has practiced securities law and is one of the partners in Utah's oldest and most prestigious law firms.

So, we are very honored that this person of extraordinary talent and superb qualifications has been selected by the President to serve in this position. And, I compliment the President on this choice.

Throughout Norm's legal career, his specialization has been in the securities field. I might add that he has lectured in the field of securities law at the University of Utah and Westminster College, served as former chairman of the Securities Subsection of the Utah State Bar, served as the former chairman of the Administrative Proceedings Subcommittee of the ABA's Securities and Litigation Committee, and is currently a member of the Federal Regulation of Securities Commission, the ABA's Committee on Securities Transaction Litigation and the ABA's Subcommittee on Liaison with Securities Administrators and the NASD.

Obviously, there is considerable experience in the securities field, which is why he has been considered one of the Nation's premier authorities in this area of practice. He has a comprehensive knowledge of Federal and State securities laws and activities affecting the brokerage and investment community.

He has handled scores of matters relating to securities, including court litigation, arbitration, registration, and reporting activities. As an arbitrator, he has been proven to be a person who can be trusted by all parties to render fair, sound, and impartial rulings.

Mr. Chairman, as you know, America's securities markets are both incubators and catalysts for capital growth. As the regulatory body that oversees these markets, the SEC can critically enhance the Nation's economic prosperity.

I don't know of anybody in my lifetime that I have more confidence in as a human being, as a decent, honorable, intelligent person of capacity than I do of Norm Johnson. I've known him for the vast majority of my life, since we were students at the Brigham Young University.

I have been very proud of the record of success that he has built as both a practicing lawyer and a knowledgeable student of the Securities and Exchange Commission and all of the rules and regulations pertaining thereto, and statutes, but also as just a down right fine human being.

Senator BENNETT. I would remind the Senator that we now have less than 5 minutes.

Senator HATCH. I would ask unanimous consent that the balance of my remarks be placed in the record at this point.

Senator BENNETT. Without objection.

Senator Lott, do you want to go ahead.

STATEMENT OF TRENT LOTT, U.S. SENATOR, FROM THE STATE OF MISSISSIPPI

Senator LOTT. Thank you very much, Mr. Chairman. Yes, I would like to.

I am here this morning on behalf of Joseph H. Neely, one of Mississippi's most outstanding citizens, businessmen and bankers, to the Banking Committee. He has been nominated by the President to the FDIC.

So, I am very proud that he is the first Mississippian to be nominated to serve on the FDIC Board. He is from my hometown of Grenada, MS. I've known him for many, many years.

He has undergraduate and graduate degrees from the University of Southern Mississippi. He was a college professor, and banker. Since 1992, he has been the Commissioner of the Mississippi Department of Banking and Consumer Finance.

He has an outstanding and innovative record in that position. I think it's really a credit to the FDIC that we will have a man with this kind of banking experience and business experience and educational background.

I am delighted to be here and support his nomination.

I also would like to take just one moment to support Hal DeCell, who is the former Administrative Assistant to Congressman Jamie Whitten of Mississippi, to his position as Assistant Secretary at HUD. I know from personal experience that Hal will be an outstanding man in that position.

He has worked with Congress for years and years. He did a great job with Jamie Whitten, the Chairman.

He is also from Rolling Fork, MS. That should qualify him for just about anything.

Thank you, Mr. Chairman.

Senator BENNETT. Duly noted.

The Committee will stand in recess.

[Whereupon, a recess is taken at 10:15 a.m., to reconvene at 10:45 a.m., this same date.]

Senator D'AMATO. I want to apologize to all of those here. We've had two back to back votes.

I know that we have started some of the introductions by my distinguished colleagues. We have Senator Cochran, who is here for the purposes of introducing several nominees.

Senator Cochran.

STATEMENT OF THAD COCHRAN, U.S. SENATOR, FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Thank you, Mr. Chairman. It's an honor for me to be here today to introduce to the Committee, Joseph Neely, who has been nominated to serve on the Board of the Federal Deposit Insurance Corporation.

He is one of our finest citizens in Mississippi. He lives in Vicksburg, MS. He is head of the State agency that is the principal regulator of the State banks in our State.

He has been very active in civic affairs, president of his civic club in Vicksburg, MS, and head of the Chamber of Commerce. He has been senior vice president of the Merchants National Bank in Vicksburg, a very respected financial institution in our State.

As the chief regulator of the banking system of our State, he is very well qualified for this position, in my judgment. He is also a person of good moral character. He is well respected by all who know him.

He is well educated. He has a Bachelor and Master of Business Administration degree from the University of Southern Mississippi.

He has attended graduate banking schools at the University of Georgia and Rutgers University as well as the University of Colorado. So, he comes to this job with a lot of ability and a lot of experience as well as preparation that uniquely qualify him to have a perspective on this Board of the small banks' interests and viewpoints.

I think that's important, Mr. Chairman. I am confident that if this Committee reports the nomination favorably to the Senate that Joseph Neely will serve with distinction on the Federal Deposit Insurance Corporation Board.

Our other nominee from Mississippi today is Hal DeCell, Hal DeCell, III, from Rolling Fork, MS, who has been nominated by President Clinton to serve as Assistant Secretary of the Department of Housing and Urban Development in the Office of Congressional and Interdepartmental Affairs. He comes to this job having served as a member of the staff of our colleague, Congressman Jamie Whitten, for many years.

He came to Washington to work for Congressman Sonny Montgomery after serving as a reporter for the Delta Democrat Times for 2 years. He was educated at Tulane University, an outstanding student.

He comes from a wonderful family. They've owned and operated the Deercreek Pilot, a small weekly newspaper in Rolling Fork, MS, for a long time.

A very respected and well liked person in his own right, Hal DeCell will be an excellent Assistant Secretary at this Department. I'm confident that he will get along with our side just as well as he gets along with the other side of the aisle.

He has a lot of friends on the Hill. And, everybody who knows him likes him and respects him.

He is a person of great intelligence and good judgment. So, it's a pleasure for me to be here today and recommend him, too.

Jane and his three children are here as well. A wonderful family.

Thank you very much for giving me this opportunity to be here to introduce these two fine men.

OPENING COMMENTS OF CHAIRMAN D'AMATO

Senator D'AMATO. Senator Cochran, let me thank you for taking up your time, because I know the tremendous pressure that you are under, that we are all under. For you to take your time certainly speaks legions as it relates to both of these nominees—Mr. Neely, who you've previously introduced me to, and now Mr. DeCell who I recall having seen and who worked with Congressman Whitten over the years.

Certainly that is the highest of compliments that you could pay, to take your time to be here to introduce nominees.

Senator COCHRAN. Thank you, Mr. Chairman.

Senator D'AMATO. I thank you. I am going to ask our first panel—and, again, we have a press of time and we have a number of nominees—to come forward: Mr. Dwight Robinson, of Michigan, to be HUD Deputy Secretary; Mr. John Knubel, to be HUD Chief Financial Officer; Mr. Hal DeCell, III, to be HUD Assistant Secretary; Elizabeth K. Julian, of TX, to be a HUD Assistant Secretary.

I want to, at this time, say that I have statements on behalf of Isaac Hunt, of OH, submitted by Senator Glenn, who could not be here, and also statements on behalf of Alice Munnell later and on behalf of Senator Kerry, who couldn't be here. I am going to put these statements into the record as if they were read in their entirety.

Senator D'AMATO. Now, I am going to ask the panel—yes, I see we have another, Kevin Chavers, of PA, to be president of the Government National Mortgage Association. OK.

Would you all stand and raise your right hand?

[The oath is administered by Chairman D'Amato.]

Senator D'AMATO. Do you agree to appear and testify before any duly constituted Committee of the Senate?

[The nominees indicated affirmatively.]

Senator D'AMATO. Thank you. I have received your background statements. They have been thoroughly evaluated by Committee, by the staff and also the necessary reviews by the FBI.

So, I am going to ask you, in the interest of time—and we will be submitting questions to you for the record. I would expect that the oath that you have taken, to agree to appear and testify before the Committee duly constituted, I would also ask each of you, not under oath, to recognize the cooperative effort that would be necessary between yourselves and between staff with the Committee.

We have had this ongoing relationship. It has been one that has worked well on a bipartisan level.

We would hope that we could continue that. I don't think—and, as I look everybody nods yes. So, for the record, you know, the reporter might want to say everybody said yes.

There is no one that objects to that, right?

[The nominees indicated no objection.]

Senator D'AMATO. Let me ask, starting with Mr. Robinson and working from your side over, if there is any statement that you would like to make. We will take your full statements, as if read, in their entirety.

Now, if everyone reads a fully prepared statement, Congress will have adjourned for the week. So, I would appreciate, if you have anyone that you would like to acknowledge and who is here with you, we would be delighted for you to do that and any brief statement that you think you could make in, let's say, less than 2 minutes.

Mr. Robinson.

DWIGHT P. ROBINSON, OF MICHIGAN, TO BE DEPUTY SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Mr. ROBINSON. Certainly, Mr. Chairman. We appreciate the opportunity to be here today. We will be extremely brief.

My name is Dwight Robinson. I am privileged and pleased to be asked by the Secretary and nominated by the President to serve in the capacity as Deputy Secretary of the Department of Housing and Urban Development.

I come before you today to seek your approval, and, I want to expressly thank my colleagues at HUD, along with the staff that has worked with me during this transition period while I have served as the Acting Deputy Secretary.

I would like to offer a special thank you to my staff at Ginnie Mae for their patience with me, and offer a thank you and to recognize my wife, Linda, who is here with me today, and to thank her and my son, Noah, who——

Senator D'AMATO. Where is Linda and Noah?

Mr. ROBINSON. My wife is here.

Senator D'AMATO. Linda, how are you? And, where is Noah?

Mr. ROBINSON. Noah is at school today. He had a choice. He had——

[Laughter.]

Mr. ROBINSON. No disrespect, Mr. Chairman, but he——

Senator D'AMATO. He chose wisely. Look how late we are.

[Laughter.]

Mr. ROBINSON. His teacher challenged the class to no TV last night and she would spend the day on the roof if they didn't watch TV. So he wanted to see his teacher on the roof today as opposed to see Daddy in front of the Committee.

[Laughter.]

Mr. ROBINSON. In any case, I would offer also my thank you, and a special thank you and gratitude to my personal staff who, above all, have put in time above the call. That is Pauline, Monica, Al, Mary Ellen and Carolyn.

I thank you for your time. I, of course, am available for your questions, Mr. Chairman.

Senator D'AMATO. Well, first of all, it is a pleasure to see you back again, Mr. Robinson. I recall that it wasn't that long ago, 2 years ago, when we had you for your confirmation hearing.

I commend you for the fine job that you have done as President of Ginnie Mae. That's a great testimony to you and for the job that you have done and the position that has been entrusted to you.

We certainly wish you the best of luck. We look forward to your continued success.

Mr. ROBINSON. Thank you, sir.

Senator D'AMATO. Mr. Knubel, you've had a great deal of experience in Government and in the private sector, having served as the senior advisor in the Federal Retirement Thrift Investment Board. No wonder why you want to get out of there.

[Laughter.]

Senator D'AMATO. A vice president at Chase Manhattan. Does that mean a merger, of things to come?

JOHN A. KNUBEL, OF MARYLAND, TO BE THE CHIEF FINANCIAL OFFICER OF HUD

Mr. KNUBEL. I don't believe so, sir. But, I do want to thank the Committee for considering my nomination.

I want to thank the President and Secretary Cisneros, as well as Mr. John Koskinen, the Deputy Director for Management at OMB, and Mr. Ed De Seve, my predecessor at HUD, who briefed me on some of the challenges that were involved in this job. I eagerly look forward to participating in this job and to the challenges which it represents.

I want to also thank my wife Carole, who unfortunately couldn't be here. She is with her mother who is recovering successfully from some surgery just 3 days ago in Florida but will be back up.

I want to thank her, because I am going to continue to try her patience in this job, as I have in the past, with the long hours that I know it's going to require. But, in many respects, this opportunity represents something that I have been personally looking forward to for many years since a student at the Naval Academy and then at Oxford studying in philosophy and economics, the working out of well administered programs.

So, I look forward to this challenge. I appreciate the opportunity to appear before you and would be happy to answer any questions that might be on your mind, either in writing or verbally.

Senator D'AMATO. Well, thank you. It's good to see you again.

We wish you success. We know that, given your years of experience in dealing with the legislative body, we hope that you will be mindful of our little problems. I know you will be.

Mr. KNUBEL. I will be.

Senator D'AMATO. Mr. DeCell.

HALBERT C. DeCELL, III, OF MISSISSIPPI, TO BE AN ASSISTANT SECRETARY OF HUD

Mr. DeCELL. Yes, sir, Mr. Chairman. Thanks very much for the opportunity to appear here today.

We are all glad to be here and appreciate your putting this together. I know it's a rough schedule to make.

I would like to thank my wife, Jane, and three children, Carrie, Clay and Charlie, for putting up with me during this process. It has been somewhat time consuming.

In addition, I would like to thank Senator Cochran and Senator Lott for their kind comments on my behalf. It has been a pleasure to work with them through the years, as well as Senator Bond and Senator Heflin, who have been very helpful.

Most of my background is well known, so I will just sit and—

Senator D'AMATO. It is well known, and you were always very thoughtful when you sat at the seat of real power.

[Laughter.]

Mr. DeCELL. You always had to be careful of what you said. So, I will keep my comments short and be glad to answer any questions that you might have, sir.

Senator D'AMATO. Thank you. Elizabeth Julian.

ELIZABETH K. JULIAN, OF TEXAS, TO BE AN ASSISTANT SECRETARY OF HUD

Ms. JULIAN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you today.

I will cut my remarks somewhat short and keep them somewhat personal. But, I do have several things in my prepared statement

that address some of the—in a general way some of the concerns I know the Committee may have about this nomination.

I want to, at the outset, acknowledge and thank my husband, Ed Cloutman, and my son, Edward, who cannot be here with me today in person but who I know are here in spirit. As you may know from my resume, I live in Dallas, TX.

When I was given the opportunity to serve in this Administration as Deputy General Counsel for Civil Rights and Litigation at HUD, our family had a difficult decision to make. My husband is a lawyer with an active law practice. My son is an 11 year old with an active career in baseball, basketball or football, depending on the season, who is quite sure that Lakewood Elementary School in Dallas could not get along without him.

So, we were thrilled that I had been asked to come to Washington to serve in Secretary Cisneros' administration at HUD, but that obviously presented us with a problem. After long family discussions, we agreed that they would hold down the fort at home and I would come to Washington and return home on the weekend, since I am a platinum flyer.

It hasn't been easy, but I actually find that it helps to maintain a healthy balance to drop back into the real world at the end of each very long week, doing Mom things and spending time with people for whom the latest beltway happenings are not a high priority. However, I want to, and must, acknowledge the very real sacrifice that my guys are making and to thank them for their love and support during this past 2 years and their continued commitment to this adventure with me.

I am both honored and humbled by my nomination. I am honored, because I have dedicated much of my professional career to fighting housing discrimination and its corrosive effects on the fabric of our country.

Being asked to serve in the position responsible for enforcement of our fair housing laws at HUD represents a culmination of that work and represents an opportunity to serve in a different and in many ways more challenging arena. I am humbled, because I know how important it is that this job be done well and in a way which engenders respect and support for the principles which are embodied in the Fair Housing Act.

As my resume indicates, prior to coming to HUD I was, for almost 20 years, a legal advocate for people who were poor and many who felt that they had been victimized by discrimination. I understand that perspective.

However, in the course of that representation, I also came to understand the limits of legal advocacy and the importance of people and communities coming together, rather than facing off, to effectively address the difficult problems of discrimination. I believe, from my own experience, that reasonable people can come together and resolve many of these issues and that leadership that encourages such coming together to find common ground on the difficult issues of race and other forms of invidious discrimination should be encouraged.

Finally, I want to speak briefly to why I am here and why this is so important to me. I am 47 years old. I grew up in a small town

in east Texas in the 1950's and 1960's, which was, and still is, about half black and half white.

I know the face of prejudice, racism and intolerance. I know how destructive it can be to individuals and communities.

I believe that the Fair Housing Act, embodying as it does basic constitutional principles of fairness, dignity and equality of opportunity, is one of the most important pieces of legislation ever to be passed by Congress. But, I also believe we have, to date, failed in its promise.

I am honored to have the opportunity to be at HUD under the leadership of Secretary Henry Cisneros, who I believe truly understands, believes in, and is committed to making good on that promise. I am honored to have been asked to play an important role in that effort.

I believe I have the common sense and good judgment to play that role out in a way that will earn your respect and trust. If I'm given that opportunity, that's what I will try to do.

Thank you.

Senator D'AMATO. Thank you very much. I would note for the record that Senator Bond has a strong statement that I would enter into the record. He is going to attempt to get here.

I would say to all of the nominees that please respond to any questions that may come to you. Again, the Committee Members—the Finance Committee is in markup.

I am going to call upon the distinguished Ranking Member in just a minute, because I know Senator Moynihan is going to go back there and protect both our interests. I count on him. I know he will be doing that at that markup.

So, I would ask you—and I would also say, please, be responsive, those of you who will have questions that will be submitted. The record will be submitted so that my colleagues will have that opportunity.

We have held this hearing—I think it's safe to say—to accommodate the Secretary, Secretary Cisneros, because we understand that these are key positions, not only to the individuals involved but to HUD and its effective administration. So, we would ask you then to be responsive.

Kevin Chavers. First of all, let me say that it is a personal pleasure to see you back, Kevin.

Kevin has been a distinguished staff member of this Committee, having served I think both in the Majority and the Minority when Democrats were in the majority and then in the minority. He was always highly effective, highly regarded, did his job in a manner which brought people together.

I am delighted that you are here today before us ready to assume this very important position. Kevin.

KEVIN G. CHAVERS, OF PENNSYLVANIA, TO BE THE PRESIDENT OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Mr. CHAVERS. Thank you, Chairman D'Amato. Thank you for those kind remarks.

I am honored and, indeed, humbled by the opportunity to appear before this Committee as President Clinton's nominee to serve as

president of Ginnie Mae. Indeed, as you've mentioned, I've sat through many confirmation hearings in this room but never before have I had the pleasure of sitting here at the witness table as a Presidential nominee.

I would like to thank Secretary Cisneros for affording me the opportunity to serve as part of his team. I would also like to offer my appreciation to Acting Deputy Secretary Robinson for his invaluable mentoring.

I would be remiss if I did not express my sincere gratitude to my family, specifically my wife, Ginger, for her love, patience and support; and, my siblings, Carrie, Clay and Donna, for their love and guidance; and, of course, my parents, William and Moria Chavers, who instilled in me an appreciation of the value of education, the expectation of excellence and a commitment to public service. I sit here before you today as a result of their hard work, dedication and sacrifice.

In fact, my personal commitment to public service stems from the examples set by my mother and father who spent 35 and 31 years, respectively, as civil servants. They did so in order to assure that their children would be afforded opportunities which had been unavailable to themselves.

My commitment is deepened by a profound sense of obligation to those who have not been as fortunate as myself and to those other public servants who made it possible for a young man like myself to sit here before this important Committee.

The chance to serve as president of Ginnie Mae represents the embodiment of my dedication to public service and fundamental belief in the viability of public/private partnerships to serve in the interest of the Nation's communities. I bring to this challenge not only the credentials which you have before you but also the values and principles instilled by my parents, who are with me here today.

I welcome the opportunity to serve, and, I will be pleased to answer any questions, Mr. Chairman.

Senator D'AMATO. Kevin, let me say it must be a great, great thrill to Mom and Dad to witness this wonderful occasion. I know it is.

For those who have worked with you, it's a great sense of pride to see you rise to this level and to see that the Administration has appreciated your talents.

Mr. CHAVERS. Thank you, Senator.

Senator D'AMATO. Again, I ask all of you that if there are individual questions that will be submitted by Members of the Committee, we would be—we would be very appreciative of a speedy response. In some cases, they are going to be very, very detailed. I have to tell you that or I want to suggest that.

Now, before I adjourn this panel, I would like to make a few comments regarding the expected actions to be taken to comply with the Government ethics rules. Mr. Knubel, it's my understanding that you have pledged to resign as a member of the Board of Directors of the Domino Insight Growth Fund upon your potential Senate confirmation.

My staff indicates that such action will be taken simultaneously with the action approving your nomination. Is that correct?

Mr. KNUBEL. Yes, sir. Just for the record, it's the Dominion.

Senator D'AMATO. Dominion?

Mr. KNUBEL. Yes, sir.

Senator D'AMATO. OK. That's my New York accent.

[Laughter.]

Mr. KNUBEL. I have one, too, sir.

Senator D'AMATO. Ms. Julian, I understand that the various matters of recusal and disqualification have been raised with you by Committee staff. The internal HUD memorandum detailing the specifics of your recusal will be made a part of the hearing record.

In addition, it is my understanding that your resignation from the Board of Directors of various educational organizations that you are affiliated with will be made simultaneously to any Senate action approving your nomination. Is that correct?

Ms. JULIAN. Yes, sir. Actually, I went on and resigned from those.

Senator D'AMATO. OK. Well, we just wanted to make that part of the record as our understanding bringing us to this point.

I want to thank all of those, all of the nominees. We will move with all due speed in each of your cases.

Thank you.

Senator D'AMATO. I am going to ask Senator Moynihan, who is here and has taken time from his busy schedule for purposes of introducing, I think, Dr. Alicia Munnell.

Senator Moynihan.

STATEMENT OF DANIEL PATRICK MOYNIHAN, U.S. SENATOR, FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Thank you, Mr. Chairman. May I ask Dr. Munnell to come forward?

Senator D'AMATO. Certainly. Dr. Munnell.

Ms. MUNNELL. Thank you, Mr. Chairman.

Senator D'AMATO. Doctor, how are you?

Senator MOYNIHAN. Mr. Chairman, this is a distinct honor and pleasure for me—and I think it would be for you—to at least in this case to introduce to the Committee Dr. Alicia Munnell, who has been nominated by the President for the most distinguished position as a member of the Council of Economic Advisers, which was established, of course, by the Employment Act of 1946 and which has, in a half century now, been the summit of the career of a professional economist in our Nation. Dr. Munnell has recently been serving as the Deputy Assistant Secretary for Economic Policy at the Treasury Department.

Prior to that, she had a long—I believe 20 years long——

Ms. MUNNELL. Twenty years.

Senator MOYNIHAN. She has had a 20 year career at the Federal Reserve Bank of Boston where she became, in time, senior vice president and director of research. During this time, no person in the Federal Reserve system came anywhere so near to being productive in scholarly works and economic analysis.

She published 10 books. She practically publishes the New England Economic Review, 48 articles in 20 years.

She is, sir, of particular interest to you and to the Congress, she would be the first member of the Council with a very close history

of attention to concern with the Social Security system. She has made that a special study.

She was a cofounder and the first president of the National Academy of Social Insurance. I don't think anyone in her generation, which sort of follows the founding generation, has studied this subject to such a large effect and has a deep knowledge of it.

It's time someone on the Council had that background. She is just the person to lead us through the maize of end taxation and about which The Washington Post speaks so warmly this morning.

I do very much commend her to this honorable Committee.

Senator D'AMATO. Well, Senator Moynihan, I want to thank you for taking up your time, particularly recognizing the extraordinary stresses and pressures and time constraints placed upon you, all of our colleagues but you in particular, given the momentous decisions that are being made and that the Finance Committee, which has been under your stewardship and your position as the Ranking Member now confers. So it is, I think, a testimony to the deep held feelings and convictions that you have as it relates to Dr. Munnell and her distinguished background.

It certainly gives to me personally a great assurance that as we proceed into some of the most difficult areas and some that may be the most contentious that the Administration calls upon someone with Dr. Munnell's illustrious background and career so that we can put some reliance in those suggestions that are put forth, again, in an area that is going to bring lots of rhetoric from both sides. We would hope that the Doctor would be able to provide that kind of light and maybe a path and will even bring, believe it or not, Democrats and Republicans together to do the business of the people.

Wouldn't that be wonderful? So, thank you.

Senator MOYNIHAN. Thank you.

Senator D'AMATO. Thank you, Senator, for taking up your time. I believe I see Senator Hatch is here.

Well, Senator Hatch, I am going to call him in a moment, because he has already introduced—

Senator MOYNIHAN. Oh, all right.

Senator D'AMATO [continuing]. And we are going to ask panel number 2 to come up. I don't know if he wants to sit up here with us or make another presentation.

But, we thank you, Senator Moynihan. Dr. Munnell, we will be back with you after we do panel number 2.

That brings us to panel number 2, Mr. Joseph Neely, to be a member of the FDIC Board; Mr. Norman Johnson, from the great State of UT, to be a member of the SEC; Mr. Isaac Hunt of OH, to be a member of the SEC.

Again, I know of Senator Hatch's strong support. I can testify to it personally, Mr. Johnson.

On a daily basis, sometimes on an hourly basis, I have been cajoled. I have never been threatened, but "Alfonse, when are we going to have these hearings?"

So, I don't know whether it's the Chairman of the SEC himself or Senator Hatch who has been a stronger advocate in terms of bringing these hearings to us today so that all of you gentlemen,

but particularly Mr. Johnson, could have an opportunity to come and to be with us.

Senator Sarbanes is here. Senator, if you have any comments? And, Senator Faircloth, if you have any comments?

OPENING STATEMENTS OF SENATOR SARBANES

Senator SARBANES. Well, Mr. Chairman, first I will say that when Senator Hatch refers to you as Alfonse, you know it's serious business.

[Laughter.]

Senator SARBANES. Second, I am pleased to have this panel before us. I look forward to hearing from them.

All of them bring us records of considerable experience and knowledge. I hope we can move on with the business at hand.

Senator D'AMATO. All right. Let me first say that the SEC has been operating with only two Commissioners for some time now.

The President has nominated Isaac Hunt and Norman Johnson to fill two of the three vacant seats. Mr. Hunt, who is a nominee to fill a Democratic Commissioner's seat, is presently the Dean and a law professor of the University of Akron School of Law.

He has been primarily involved in academia for the last two decades and is a former SEC staffer from the Division of Corporate Regulation. So, he brings a varied and important background to the Commission.

Mr. Johnson is a nominee to fill the Republican Commissioner's seat. He has been a very successful and outstanding securities law practitioner for the past three decades and was also a former SEC staffer who served as a trial attorney in the Trading and Markets Division. For now, at least, Mr. Johnson will be the lone Republican voice on the Commission.

Joseph Neely has been nominated to be a member of the Board of Directors of the FDIC. Mr. Neely is currently the Commissioner of Banking for the State of MS and has a stellar record of achievement in his 15 years.

With Mr. Neely's appointment as the Republican member of the FDIC Board, the FDIC's five-member Board will be at full strength for the first time since 1992. His expertise and experience will be a welcome addition to the Board.

Gentlemen, would you please stand just for the purposes of the oath?

[The oath is administered by Senator D'Amato.]

Senator D'AMATO. Do you agree to appear and testify before any duly constituted committee of the Senate?

[The nominees responded affirmatively.]

Senator D'AMATO. As I've indicated to the others, your full statements will be included in the record as if read in their entirety. And, at this time, we will start with you, Mr. Neely.

JOSEPH H. NEELY, OF MISSISSIPPI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. NEELY. Thank you, Mr. Chairman. I am grateful for the opportunity to appear before this distinguished Committee.

I would also like to thank Senators Lott and Cochran for their friendship over the years and for taking the time to appear before the Banking Committee today in support of my nomination. I feel very honored to have the support of the Senators that represent my home State as well as the people of Mississippi.

I speak for my wife, Linda, and my son, Joel, and my daughter, Jessica, who could not be here with me today. Without their support I could not even consider this opportunity.

I am deeply honored that the President has nominated me to the position of Director on the Board of Directors of the Federal Deposit Insurance Corporation. As you mentioned, Mr. Chairman, the Committee is familiar with my background.

I have witnessed many changes in the banking and thrift industry over the past 20 years, as have the Members of this Committee. I also recognize that the FDIC has a great many financial and management challenges facing it currently.

The perspective that I would bring to the FDIC Board is founded at the grassroots level of the Nation's financial institutions—as a community banker and as a State supervisor. In summary, my career has allowed me to witness firsthand the effects and the end results of regulatory decisions and mandates.

My perspective was developed in the lobbies and on the front lines of community banks, as a banker and as a regulator. I hope to never lose this perspective and to bring it with me to the board room of the FDIC.

Again, I welcome this opportunity to appear before the Committee and answer your questions.

Senator D'AMATO. Mr. Neely, are you sure you want to make this move, going from superintendent into this thicket?

[Laughter.]

Senator D'AMATO. I know you do. We have spoken before.

The fact is that you've got the strong, strong support of both your Senators, Senators Lott and Cochran. We have met.

I am delighted that we have come to this point. We look forward to your stewardship and your service in this very, very important area.

Mr. NEELY. Thank you, Mr. Chairman.

Senator D'AMATO. Norm, I feel that you are almost like a brother.

[Laughter.]

Senator D'AMATO. I'm telling you. Morning, noon, night, wherever I've been, there has—

[Laughter.]

Senator D'AMATO [continuing]. Been a great advocate on your behalf, not only because of the friendship that he has with you over so many years but because of the great respect and the understanding and knowledge that he knows that you are going to do a terrific job. I am talking obviously about the senior Senator from UT, Senator Hatch.

So, we are glad that we have you here this day.

NORMAN S. JOHNSON, OF UTAH, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. JOHNSON. Thank you, Mr. Chairman.

Senator D'AMATO. Do you have a statement?

Mr. JOHNSON. I would like to introduce my wife, Carol, who is here.

Senator D'AMATO. Mrs. Johnson.

Mr. JOHNSON. I am very humbled by this nomination and this experience. I am very thankful to be nominated by the President and sponsored by Senators Hatch and Bennett and for the assistance of the Chairman and his staff.

If this nomination is confirmed, I pledge my energies and efforts to do my very best on behalf of Congress and the people of America.

Thank you.

Senator D'AMATO. Thank you, Norm. Mr. Hunt, is it Dean?

Mr. HUNT. Former Dean, sir. I retired from the deanship at the end of the fiscal year.

Senator D'AMATO. Well, if you could handle that, being Dean of a major law school, then I have to tell you, we need your help over at the SEC.

Mr. HUNT. Thank you.

Senator D'AMATO. Now, you come with the highest of recommendations. Senator Glenn has put in a very strong letter of recommendation.

I know Chairman Levitt is looking forward to you joining with him and helping him. I think the SEC has been doing an outstanding job.

We certainly look forward to your participation.

Mr. HUNT. Thank you, Mr. Chairman.

Senator D'AMATO. Do you have a statement?

ISAAC C. HUNT, JR., OF OHIO, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. HUNT. Chairman D'Amato and Members of the Committee, I will be brief. It is for me, of course, indeed, an honor and privilege to be considered for the position of Commissioner of the Securities and Exchange Commission.

I am honored to have been nominated by President Clinton to serve on the Commission.

As you noted, Mr. Chairman, my first job out of law school was as an attorney on the staff of the SEC. From that time until now, I have been proud of that association, as I consider the SEC to be one of the finest, if not the finest, independent regulatory agencies in the United States Government.

I would like to introduce you to my son, Isaac Cosby Hunt, III, who is behind me, who has joined me here today. His decision at the relatively young age of 21 to devote himself to helping others by embarking on a career in public schools teaching, at least for awhile, was a source of great pride for me and for his mother, my late wife, Elizabeth.

I would like to thank you, Mr. Chairman, Senator Glenn and members of the staffs of the Committee for the courtesies they extended to me and to my fellow nominee and now friend, Norman Johnson. I would be remiss also if I did not thank the Commission staff members for their excellent assistance to the two of us in the recent weeks.

I look forward to working with the Commission. It has interesting problems, a talented staff.

I stand ready to answer any questions of the Committee, written or oral. Thank you, Mr. Chairman.

Senator D'AMATO. Thank you, Mr. Hunt. I would like to note, before we open up for questions—and this Senator does not intend to pose any but, for the record, Senator Bennett was here and opened the hearings initially for the purposes of having Senator Hatch make a presentation of Mr. Johnson. He has been detained at another hearing.

He has asked that I enclose a statement on behalf of him, on behalf of Mr. Johnson, for the record. So ordered. That will be included, a strong record of support.

I have no questions of the nominees. I would ask that if the Committee or individual Members, through the Committee, submit questions to you that you please respond as promptly as possible so that we can move this process forward.

I am very confident, as it relates to all three of the nominees, that we will be acting with all due speed and will be bringing to the floor your nominations so that you can be confirmed by the entire Senate.

Senator Sarbanes.

Senator SARBANES. Well, thank you very much, Mr. Chairman. Mr. Johnson and Mr. Hunt, you both worked for the SEC early in your careers, as I understand it.

Mr. JOHNSON. Yes, sir.

Mr. HUNT. Yes, sir.

Senator SARBANES. I was wondering, given that past acquaintance with the SEC—and I assume you have continued to follow it—what problems do you see confronting the Commission right now?

Mr. HUNT. I think there are a myriad of problems confronting the Commission right now, Senator Sarbanes. We've got ever more complex investment instruments being developed by the industry.

As you are probably aware, from the papers in the last few days, we have regulatory and legislative initiatives springing from both the Commission and from Members of the Senate and House that could radically change the securities business. We have problems of the globalization of the industry and how to reconcile foreign countries accounting and disclosure standards with ours as the market becomes more integrated.

So, I don't think that the Commission, at this juncture, wants for interesting work.

Senator SARBANES. Mr. Johnson.

Mr. JOHNSON. I would add to that perhaps that Glass Steagal is an issue that is facing the Commission and that litigation reform is a matter that involves the Commission.

I think those are two areas.

Senator SARBANES. Let me just add one other, which is working its way through the legislative labor. But, there is at the moment a projected 20 percent cut in the funding for the Securities and Exchange Commission.

The Chairman of the Commission has written to us and said that it's just impossible for the Commission to do its work with that size of a cut. That's a matter of very deep concern.

Actually, what happened—it's interesting. The fees which the Commission charges the private sector for various filings, which do not go to the Commission but they go into the Treasury and then the Commission gets its money by a separate appropriation, those fees have exceeded the appropriation given to the Commission.

This year, the Commission's budget was cut 20 percent and the fees were cut by legislative action. I don't happen to subscribe to the legislative action, but cut the fees.

In fact, the fees were cut by roughly the amount by which the Commission's budget was cut. So, in effect, what you have is the SEC being reduced to 80 percent of its capability by the budget cut at the same time that you are reducing the fees.

This is not an increase in—deferring an increase. This is actually reducing the existing fees.

Now, some in the private sector have already told us they prefer to pay the fees and have an SEC that can function properly. I think it's a responsible recognition on their part of the importance of the SEC in providing the integrity of our markets.

But, I think that's going to be one of the—if that stays, then hopefully we can find some way to reverse it. But, if that stays, I think that's going to be your overwhelming problem when you get there.

Chairman Levitt has done a very responsible job of leading the SEC. He has already told the Congress that this is impossible for them to be able to handle.

So, I just add that to your agenda.

Mr. HUNT. Thank you, Senator.

Mr. JOHNSON. Thank you, sir.

Senator SARBANES. I have no other—

Senator D'AMATO. You don't want to discourage them.

[Laughter.]

Senator SARBANES. Well, they need to know what they are headed into, because I think this is one area where regulation serves a very important function. The U.S. markets are respected around the world because people can rely upon them and go into them with some sense that there is going to be fair dealing and integrity in the marketplace.

Senator D'AMATO. I have sent a strong letter, just for the record—and I don't know if my colleague, Senator Sarbanes, is aware—yesterday to Senator Gramm in which I proposed that we increase the funding to the level that has been suggested, restore the 20 percent cut. If need be, we would increase the fees accordingly; that the industry representatives have met and that I think there is a broad consensus—not all of the industry but a broad consensus that they would rather have that slight increase or restoration—actually it's already decreased and add it back for the purposes of seeing to it that the work of the SEC can be continued.

I believe that we are going to work toward an accommodation. At least 10 percent of those funds or half will be restored, I believe, in the present bill.

It is my hope that when we get to conference, by that time we will be able to work out the balance. But, certainly it does not make sense in this market to jeopardize the kind of enforcement

that helps keep honest people honest and roots out those rogues and people who would take advantage of the system.

The system is changing so quickly today that we need those resources. Those resources will pay great dividends to the American capital and free market system, not over Government regulation but is being there in a manner consistent with seeing to it that the capital free market system works without those who would extort or would hijack or who comes in with the various schemes that really not only defraud individuals but threaten the vibrancy and the vitality of this great market.

I think the Commission overall has done an extraordinarily effective job and has been well balanced. Now, you can pick any one issue and say reasonable people might disagree on them.

But, overall I think they have done an extraordinary job. I look forward to the service of all three of our nominees, two of them at the SEC, and Mr. Neely with the FDIC. I think the three of you will make very important contributions.

We thank you for being with us today.

Senator SARBANES. Well, gentlemen, Chairman D'Amato has just brightened your day a little bit by the report of these activities of his. I am hopeful they are going to produce a fruitful result and you will be able to work in a more reasonable budget environment.

Thank you.

Senator D'AMATO. Thank you all for being with us. Let me ask Dr. Munnell to come up again.

Alicia Munnell is no stranger to this Committee. I think she has testified before probably more congressional committees—Alicia, Doctor, I ask you to take the oath.

[The oath is administered by Senator D'Amato.]

Senator D'AMATO. Do you agree to appear and testify before any duly constituted committee of the Senate?

[The nominee responds affirmatively.]

Senator D'AMATO. Thank you so much, Doctor. Dr. Munnell, we are pleased that you are here before us.

You have been nominated to serve as a member of the President's Council of Economic Advisers. You are presently the Assistant Secretary of Economic Policy at the Department of Treasury.

Prior to coming to Washington, Dr. Munnell has held a number of positions with the Federal Reserve Bank of Boston, most recently serving as senior vice president and director of research. I think no greater tribute could be paid than the recommendation and the knowledge that Senator Moynihan, who has worked with you and observed your work over the years, gave in his presentation today.

So, we welcome you to the Committee.

ALICIA H. MUNNELL, OF MASSACHUSETTS, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE LAURA TYSON

Ms. MUNNELL. Thank you very much, Mr. Chairman and Senator Sarbanes. I am very pleased and honored to appear before you today.

I would like to thank Senator Moynihan, who spoke on my behalf. I have known him for a very long time and admire him very much. So, I am very appreciative of his endorsement.

I would also just like to take a moment and introduce three members of my family who are here today—my husband, Henry Healy; my sister-in-law, Katherine Smith; and, my son, Clark Munnell. My other son, Hamilton—

Senator D'AMATO. Where is Clark?

Ms. MUNNELL. Clark.

Senator D'AMATO. OK. You've got them all split over here. Your sister is over there. Clark is there.

Ms. MUNNELL. My other son, Hamilton, is just starting a career as a teacher in Concord, New Hampshire this month, so he couldn't come today.

I would just like to say a word about the Council of Economic Advisers. As you noted, I have served for 3 years in Government, so I have seen the contribution firsthand that the Council makes.

The Council is not embedded in any agency, so it doesn't have to defend any particular programs. It also has a wondrous staff.

It brings people in for 2 years. They have fresh ideas. They have lots of energy. They have wonderful analytical techniques.

Time after time, I would enter a room in the White House or the Old Executive Office Building and see somebody from the Council across the table and know that from Day One I would have an ally on any particular issue.

This is both an exciting and challenging time to be in economic policy. We have had some short term successes in getting the economy moving and creating jobs, but we face many long term challenges.

Productivity growth is not fast enough. The distribution of wage growth is very unequal. These are the problems that we need to solve as we enter the 21st century.

Finally, I relish the opportunity to serve as a member of the Council, but I will be very sad to leave the Treasury Department. The Treasury Department has one of the best career staffs that you have ever seen.

Everything you have ever heard about them is true. They are wonderful.

Finally, in the last few weeks, I have met with several Members of the Banking Committee. I really appreciate the time they have taken to talk to me.

The only way we are going to make any progress is with an open and candid dialog. So, I appreciate their candor and the time that they have spent.

I would be delighted to answer any questions you have of me.

Senator D'AMATO. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I have no questions. Just let me say that I think this is a splendid appointment.

Dr. Munnell brings an excellent background, both in academic training and experience, to the Council. She has earned degrees in economics from three highly respected institutions—a doctorate from Harvard, a Master's from Boston University, and a Bachelor's from Wellesley.

She did distinguish work in the Research Department of the Federal Reserve Bank of Boston for about 2 decades. She directed the Department for the last 9 of those years. Her own research and the research that she directed have a reputation in the field for careful scholarship and for policy relevance.

For the last 2½ years, she has been doing an outstanding job as Assistant Secretary of the Treasury for Economic Policy.

Her research has covered a wide range of issues. She knows both macroeconomics and microeconomics.

I think her background and expertise make her an excellent candidate, not only for this position but actually for any number of positions in economic policymaking. So, I have a particularly keen interest, because I worked for a year for Walter Heller when he was Chairman of the Council of Economic Advisers.

I think the Council, over the years, has been an outstanding agency. Some of the finest economists in the country have served as members of the Council of Economic Advisers.

As Alicia Munnell pointed out in her statement, the Council has been able, since it has no vested departmental or agency interest, to take a broader view of economics. I think has been a very valuable adviser to presidents, both Republican and Democrats.

We had a bit of a scare here, because some in the Congress seem not to fully appreciate the role of the Council. But, I must say that the Senate seemed to understand it. I think things are back on track there.

But, I very much welcome this nomination. I wish her well. I think she will do an outstanding job.

I have no questions.

Senator D'AMATO. Well, I have no questions, Dr. Munnell. I'm not going to get into the CPI, what we should or shouldn't be doing.

I mean, Senator Moynihan left that in your capable hands.

Ms. MUNNELL. Why, thank you, Mr. Chairman.

Senator D'AMATO. So, I will be looking forward to your recommendations. But, we certainly welcome you.

We intend to move this nomination speedily.

Ms. MUNNELL. Oh, thank you very much. Thank you, Senator Sarbanes.

Senator D'AMATO. Thank you for being with us.

There being no further business, we stand in recess.

[Whereupon, the Committee was recessed at 11:37 a.m., this same date.]

[Prepared statements, biographical sketches and response to written questions follow:]

ROBERT F. BENNETT
UTAH

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United States Senate

WASHINGTON, DC 20510-4403
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September 29, 1995

Statement by Senator Robert F. Bennett Regarding Norman S. Johnson for the Nomination to the S.E.C. Board

Mr. Chairman, I wish to commend Norman S. Johnson for the consideration of this committee.

Mr. Johnson has considerable experience to recommend him to be a member of the board of the Securities and Exchange Commission. He is a graduate of the University of Utah College of Law. He began his career as an Assistant Attorney General for the State of Utah and also clerked for the Chief Justice of the Utah Supreme Court.

Mr. Johnson has worked with the Securities and Exchange Commission in the past, serving as a Trial Attorney for the Division of Trading and Markets from 1965 to 1967. He has also practiced privately, including practicing with the respected Salt Lake City firm of Van Cott, Bagley, Cornwall, & McCarthy.

Mr. Johnson has been extensively involve with the Utah State and Federal Bar Associations. He is a member of the Utah State Board of Bar Commissioners, a former Chairman of the Securities Sub-section of the State Bar, and a past President of the Utah State Bar Association. In addition, he has served as President of the Utah Chapter of the Federal Bar Association.

Mr. Johnson has been of great service to his community. He has served on the Board of Legal Aid and has taught securities law at both the University of Utah and Westminster College. He has also been extensively published on the topic of securities law.

Mr. Johnson is a highly recommended and respected individual in his field. Because of this and his extensive qualifications, I have no reservations in recommending Norman S. Johnson to become a Member of the Board of the Securities and Exchange Commission.

To Be Read Into the Record



PREPARED STATEMENT OF SENATOR ORRIN G. HATCH INTRODUCTION OF NORMAN S. JOHNSON

Mr. Chairman it is indeed an honor and privilege for me to recommend my good friend, Norman S. Johnson, to fill a vacancy on the Securities and Exchange Commission (SEC).

President Clinton could not have made a better choice in selecting Norm to fill this important seat, and I urge this Committee to favorably report his nomination to the full Senate.

Norm is a person of extraordinary talent and superbly qualified to serve in this position. Throughout his legal career, his specialization has been in the securities field.

His legal practice in this field began in 1967 after Norm finished a 2-year stint as an attorney with the Trial Attorney Division of the SEC.

He has lectured in the field of securities law at the University of Utah and Westminster College, served as the former chairman of Securities Subsection of the Utah State Bar, served as the former chairman of the Administrative Proceedings Subcommittee of the ABA's Securities and Litigation Committee, and is currently a member of the Federal Regulation of Securities Commission, the ABA's Committee on Securities Transaction Litigation, and the ABA's Subcommittee on Liaison with Securities Administrators and the NASD.

Obviously, that is considerable experience in the securities field, which is why Norm has been considered and is considered one of the Nation's premier authorities in this area of practice.

Norm has a comprehensive knowledge of Federal and State securities laws and activities affecting the brokerage and investment community. He has handled scores of matters relating to securities, including court litigation, arbitration, registration, and reporting activities. As an arbitrator, he has proven to be a person who can be trusted by all parties to render fair, sound, and impartial rulings.

Mr. Chairman, as you know, America's securities markets are both incubators and catalysts for capital growth. As the regulatory body that oversees these markets, the SEC can critically enhance the Nation's economic prosperity.

Norm Johnson is a superb choice to be appointed to serve this critical position at this critical time, and I believe we are fortunate that he is willing to leave his private law practice to return to the SEC where he can be a positive influence for this country's long-term interest.

I have known Norm for many years and I am confident that this Committee will find him to be an excellent Commissioner. I know that he will serve with distinction on the SEC.

Thank you.

PREPARED STATEMENT OF SENATOR TRENT LOTT INTRODUCTION OF JOSEPH H. NEELY

I am delighted to be here today at this confirmation hearing to introduce Joseph H. Neely, one of Mississippi's most outstanding citizens and businessmen, to the Banking Committee.

I am particularly proud of Joe since he is the first Mississippian to ever be nominated to serve on the FDIC Board.

Joe's wealth of on-point experience and familiarity with the broad range of issues affecting the FDIC Board make him an excellent nominee.

Joe was born in my hometown of Grenada, MS. He attended the University of Southern Mississippi where he obtained his undergraduate and graduate degrees. He was a college professor before beginning his banking career in 1977.

He was appointed the Commissioner of the Mississippi Department of Banking and Consumer Finance by Governor Kirk Fordice in 1992. As such, he is the primary regulator and supervisor of all State-chartered banking and thrift institutions. He also supervises State-Chartered Credit Unions as well as all consumer finance activities within the State.

He has done a super job in this capacity:

- He has been very active in initiating and supporting improvements in the State Banking System.
- He pressed for legislative authorization for realignment of the Department which allowed the Department to attract and keep qualified, experienced examination staff.

- He also worked in support of legislation to standardize and modernize a number of State statutes to improve supervision of State banks and savings institutions.
- And, under his leadership, the Department entered into cooperative agreements with the FDIC and the Federal Reserve whereby the Banking Department and the Federal regulators cooperate in the examination process.

Joe has had a diverse career first as a professor, then as a community banker and now as the Mississippi State Bank Supervisor. He will bring a great deal of knowledge to the Board from his varied experiences. He will be able to offer academic, practical, and supervisory expertise to the Board.

In addition to his demanding work schedule, Joe has held leadership roles in numerous other professional, civic, and charitable organizations.

Joe's reputation as a banker is impeccable, and his character and integrity are beyond reproach. He has earned an excellent reputation as a regulator who is able to balance safety and soundness issues with an understanding of the banking industry.

Joe is held in high esteem by people in Mississippi and in other States. His experience as a board member of the Conference of State Bank Supervisors has already drawn national attention to his talents.

Joe's character, combined with his excellent understanding of banking, his broad range of experiences, and his proven leadership skills make him an exceptional candidate for the FDIC Board.

The FDIC and the industry would be very fortunate indeed to have a person of Joe's caliber on the Board.

I look forward to Joe's approval by this Committee and confirmation by the Full Senate. And, I certainly hope that we can soon welcome Joe, his wife, Linda, and their two children—Joel and Jessica—to Washington.

PREPARED STATEMENT OF SENATOR JOHN GLENN INTRODUCTION OF DEAN ISAAC HUNT

I regret that I cannot be there today to introduce one of Ohio's outstanding citizens, Dean Isaac Hunt.

It is all too rare that we come across someone who has the experience and talent of Dean Hunt. Throughout his career, Mr. Hunt has earned a distinguished reputation. An academic, an administrator, and a practitioner, he has an enduring commitment to public service.

Dean Hunt is no stranger to the Securities Exchange Commission. After graduating from the University of Virginia Law School, Dean Hunt began his legal career as an attorney with the SEC working 5 years on a broad range of security issues. He then went on to a diverse range of public and private sector positions with the Kerner Commission; the EEOC; Rand; Bryn Mawr, Catholic University School of Law; Jones, Day, Reavis and Pogue; the Army's General Counsel and the Antioch School of Law. We in Ohio are fortunate that in 1987 Dean Hunt chose to move to Ohio to become Dean of the University of Akron Law School.

But Dean Hunt's dedication extends beyond the workplace. He has also found time to make many impressive contributions to the work of Ohio Bar Association and his local community. And as you'll see from his resume, Dean Hunt has made more speeches on more topics than many of us have ever done on the Senate floor—and that's saying a lot.

Dean Hunt's distinguished career and impressive credentials make him an outstanding candidate for the SEC. Isaac Hunt is a seasoned professional who's thorough knowledge of the markets will greatly contribute to the work of the SEC as it addresses the significant challenges in today's marketplace. After your review of his qualifications, I'm sure you'll agree that we have before us a truly outstanding nominee, and I urge your favorable consideration of his candidacy. We are fortunate that Isaac Hunt is ready to return to the SEC.

PREPARED STATEMENT OF SENATOR JOHN F. KERRY INTRODUCTION OF ALICIA HAYDOCK MUNNELL

Thank you Mr. Chairman. I welcome the opportunity to reintroduce Assistant Secretary Munnell to the Committee. She is a friend who really needs no introduction—an extraordinarily qualified person nominated by the President to serve on the Council of Economic Advisors.

Let me say, Mr. Chairman, that though many of us have respected her advice and counsel over the years—as I look through her lengthy and impressive qualifications—I am still struck by the 16 pages of publications that represent an incredible body of economic writings that catalogue a lifetime of uncommon economic analysis and perspective.

She is certainly one of our most thoughtful economists, and a noted expert on the economics of pensions, and I envy her analytical ability and her perseverance in putting it all down on paper.

Frankly, I know she has two grown children: T. Clark and Hamilton—and a husband, Henry Healy in Boston—and I can't imagine when she found the time to raise her family, commute to Washington to serve her country, and still publish such a broad range of threshold economic analysis. I know how difficult writing can be; and I know she enjoys the challenge, and does it well.

Her insights—on the dynamics of long-term economic policy and its impact on the future of workers, the social security system, as well as pensions and investment economics, along with particular ideas on what we must do as a Nation to understand what this all means to real working families in America—can help to change the economic status quo and give us the wisdom and the where-with-all to understand and control the new global and domestic economic dynamics of the 21st century.

I truly believe that we need her voice on the Council. We need her genius. We need her experience; and we need her vision.

Mr. Chairman, my distinguished colleagues, Senator Kennedy and the Senior Senator from New York, Senator Moynihan, have discussed Dr. Munnell's impressive qualifications, and I will not take the time of the Committee to repeat them.

Suffice it to say that her career ranges from the classroom to the board room—from banks to think tanks—from community service to national service.

But, I think it is important to note that her "big picture" perspective on the complexities of economic policy—not any one accomplishment or her position on any one issue—is what she will bring to the Council of Economic Advisors and to the formulation and recommendation of fair and responsible policies.

Mr. Chairman, Dr. Munnell is an extraordinary candidate for the Council and it is without reservation that I commend her to the Members of the Committee and wish her every success.

PREPARED STATEMENT OF SENATOR CHRISTOPHER S. BOND INTRODUCTION OF ELIZABETH K. JULIAN

Chairman D'Amato, thank you for calling this important hearing on these Presidential nominations. I applaud you for your diligence. The Senate is vested with the critical responsibility to ensure that all nominees for high positions in the Executive Branch have the expertise, capacity, and integrity to properly administer their appointed duties.

I have had an opportunity to review the nomination packages, and for the most part, I am very pleased with the qualifications of the nominees. However, I am compelled to raise several concerns about the nomination of Ms. Betsy Julian for the position of Assistant Secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development. Ms. Julian has excellent credentials with career as a legal advocate dedicated to fighting housing discrimination.

Nevertheless, it is Ms. Julian's expertise and background that raises significant concerns regarding her ability to administer the Office of Fair Housing and Equal Opportunity at HUD. As I understand it, Ms. Julian was lead attorney against HUD on two of the most significant class action fair housing cases of the last decade, *Young v. Kemp* and *Walker v. HUD*. In fact, I believe both these cases are ongoing and have already resulted in significant policy, operational, regulatory and structural changes within HUD, public housing authorities, and the applicable jurisdictions.

Also, troubling is the fact that Ms. Julian has been awarded attorney fees against HUD in the amount of \$167,000, which is currently on appeal.

I do not know how Ms. Julian can avoid the appearance of a conflict of interest in her nominated position of Assistant Secretary for Fair Housing and Equal Opportunity at HUD. These cases have broad policy implications which will reverberate through many of the public and assisted housing policies at HUD and through many of the policies implemented in the Office of Fair Housing and Equal Opportunity. I frankly believe this appearance of a conflict of interest needs to be closely reviewed by the Committee.

This is a very complex issue, so while I will have some questions today, I will also want to pursue a fuller understanding of Ms. Julian's past and current relationship to these cases, and how this relationship will impact her ability to fully meet the responsibilities of the position of HUD Assistant Secretary for Fair Housing and Equal Opportunity.

One additional concern, despite certain reservations, I voted several years ago in support of Ms. Roberta Achtenberg for the position of Assistant Secretary for Fair Housing and Equal Opportunity at HUD. At that time, I expressed concern that Ms. Achtenberg would use her position for advocacy rather than enforcement. Ms. Achtenberg assured me that she had no intention of using her position to encourage or cultivate new fair housing protections. Ms. Achtenberg failed to live up to her promise; the most obvious example being HUD's investigation and followup with regard to fair housing violations against individuals who through the constitutional right of free speech oppose, for example, the location of homeless shelters in their neighborhoods. I remain very concerned about HUD's ability to provide consistency in fair housing policies, which has prompted the provision in the VA/HUD FY 1996 appropriations bill which would move fair housing from HUD to the Department of Justice.

Thank you again, Mr. Chairman, for calling this important hearing. I look forward to hearing the testimony of the witnesses.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: ROBINSON DWIGHT P.
(LAST) (FIRST) (OTHER)

Position to which nominated: Deputy Secretary of HUD Date of nomination: _____

Date of birth: 4/7/53 Place of birth: Detroit, Michigan
(DAY) (MONTH) (YEAR)

Marital status: Married Full name of spouse: Linda J. Washington-Robinson

Name and ages of children: Noah Robinson 5 Years Old

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>Northwestern High School</u>	<u>1969-1971</u>	<u>Diploma</u>	<u>June 1971</u>
	<u>Michigan State Univ.</u>	<u>1971-1976</u>	<u>B.S.</u>	<u>1976</u>
	<u>Central Michigan Univ.</u>	<u>1987</u>	<u>No Degree</u>	
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Michigan Legislature for Outstanding Service, Michigan State
Housing Finance Authority, 1990

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Urban League	N/A	1980-1990
Michigan Real Estate License (Escrow)	N/A	1978 (Escrow)

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

1993 to Present - President, Government National Mortgage Assn.

(Presidential Appointee)

1/91-9/93 - Federal Home Loan Mortgage Corp., Director,

Single-Family Affordable Housing, McLean, Virginia

10/76-1/91 - Michigan State Housing Development Authority,

Deputy Executive Director, Lansing, Michigan

2/76-10/76 - Ann Arbor Housing Commission, Project Manager,

Ann Arbor, Michigan

12/75-2/76 - City of Flint, Department of Community Development,

Planning Assistant, Flint, Michigan

**Government
experience:**

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Government National Mortgage Association

Ann Arbor Housing Commission

Michigan State Housing Finance Agency

**Published
writings:**

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

**Political
affiliations
and activities:**

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

No political office. Associated with Potomac List (PAC)

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

None

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

HUD is my current employer (Government National Mortgage Assn.)

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

I have divested all investments in Freddie Mac stock which was considered a potential conflict of interest. I have otherwise divested all investments in accordance with the ethics requirements that have been presented to me through the Ethics office at the Department of Housing and Urban Development (HUD).

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

Testimony before the Senate Committee on Banking, Housing, and
Urban Affairs, Subcommittee on Housing and Urban Affairs on the
Federal Housing Administration's Mutual Mortgage Insurance Fund -
July 1990

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

The only potential conflicts that were apparent to me as disclosed in
Item No. 2 have been resolved through divestiture.

Civil, criminal and
 investigatory
 actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

To my knowledge, I have never been named the subject of or defendant
in a criminal proceeding. A review of the administrative files of the
Michigan Housing Development Authority revealed the fact that I was
named in a 1989 Civil Rights claim and a 1987 Administrative Action.
Both proceedings involved my function in a professional and official
capacity with the State agency. The actions were resolved or dis-
missed for insufficient grounds. It is my opinion that neither case
had merit. Please see Attachment B

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

QUALIFICATION

For almost twenty years, I have been working to finance, manage and develop safe, sanitary, decent and affordable housing for low and moderate income families.

During my career at the Michigan State Housing Development Authority, I was involved in negotiations with Wall Street and the investment community. My responsibilities included managing a lending portfolio of more than 50,000 multi-family units and 20,000 single family loans backed by tax-exempt bonds totalling several billion dollars. My primary responsibility was to protect and manage the credit of the state while managing the requirements of the bond investors, to meet the needs of low income families.

My experience with the Federal Home Loan Mortgage Corporation added to my understanding of mortgage finance which gave me specific work experience in the secondary mortgage market. I worked to align affordable housing, lending with the requirements of the secondary market, as well as credit analysis, marketing and finance.

In addition to policy and program requirements, I have experience managing the operational side of the business dealing with contract negotiations, personnel issues, organizational development and reorganizations. My experience has afforded me to work in providing credit for low and moderate income families, while managing the interest of the credit provider. Early in my career, I realized that low income families need the same access to credit that sustains all successful corporation and growing communities. HUD's mission is to create communities of opportunities, bring housing and homeownership to millions of citizens and protecting poor and vulnerable populations. I feel my experience qualifies me to help this administration manage HUD towards successfully meeting its mission.


Michigan State Housing Development Authority

James L. Logue III, Executive Director

Plaza One, Fourth Floor

401 South Washington Square, P.O. Box 30044

Lansing, Michigan 48909

 State of Michigan
 John Engler, Governor

 Department of Commerce
 Arthur E. Ellis, Director

September 1, 1993

 Dwight Robinson
 Affordable Housing Initiatives
 Freddie Mac
 8200 Jones Branch Drive
 Mail Stop 242
 McLean, Virginia 22102

Dear Dwight:

We have reviewed all the administrative files currently in our possession which include all grievances, Civil Rights claims and administrative hearings/arbitrations since 1985.

From our records it appears that you were named in only the following cases:

1. 1989 Civil Rights claim filed by Marvin Vanek alleging that Dwight Robinson, as the Deputy Director discriminated against him due to his race and age. Mr. Vanek alleges that Mr. Robinson overturned discipline he issued to his subordinate, failed to support him, and sided with the younger minority employees thereby discriminating against him, an older white male. This case was investigated by the Department of Civil Rights and a dismissal order was issued for insufficient grounds on which to issue a charge. (Summary of findings enclosed)
2. 1987 grievance filed by Gwen Broadnax against Dwight Robinson, first line supervisor, for issuing a written reprimand to her for failing to do an assignment. The assignment was later completed, the reprimand removed from the file and the grievance dropped. (Original grievance enclosed)

If you need any additional information please feel free to contact me.

Sincerely,

 Rita Canady
 Director of Human Resources

Enclosures

Michigan State Civil Service

GRIEVANCE PROCEDURE FORM CS G1

Department (Agency) Department of Commerce
Michigan State Housing Development Authority
 Operational Unit Office of Management and Reinvestment

(Print or type name) Gwendolyn Broadnax 1369-36-7354

I discussed my complaint with my supervisor, and received his oral answer on (date) 12-11-86. This answer is unacceptable. I wish to grieve to Step 2.

This is a direct appeal to: ☒ Step 2, ☐ Step 3, ☐ Step 4, ☐ Step 5

EMPLOYEE'S STATEMENT OF GRIEVANCE

Be specific as to facts, names, facility involved, dates, places, etc. State specifically which personnel law, policy, rule, regulation, procedure, condition of employment, past practice, or agreement was involved and how it was violated.

My grievance is: On December 11, 1986 I was given a written reprimand for failure to complete a "revised position description" in a timely manner. This PD was requested because my Detroit office was closed and I am working exclusively in the Lansing office. Section 4-2.1a of the Civil Service Commission Rules as revised October, 1985 states . . . "appointing authorities shall give notice to the department of material changes in the duties and responsibilities . . ." Since, I have always divided my time between the Lansing and Detroit offices, I do not consider working full time in Lansing as a material change in my duties and responsibility.

A just and fair solution of my grievance is:

1. Reprimand be removed.
2. That MSHDA refrain from this type of harassment in future course of my employment.
3. That I be in all ways made whole.

Grievant's Signature Gwendolyn Broadnax Date Given Supervisor _____

Representative's Name _____

Received 12/15/86

STEP 1 SUPERVISOR'S ANSWER

The employee's request that the reprimand dated 12/4/86 be removed on the basis of Section 4-2.1a of the Civil Service Rules, is denied. Section 4-2.1a of the Civil Service Rules is not applicable to the noted reprimand. Moreover, the noted reprimand deals with the employee's inability or unwillingness to complete an assignment which was clearly made. No harassment is involved but rather direct written and verbal instructions which were not followed. This situation is not and will not be tolerated.

Grievance Denied.

Signature [Signature] Date Given Employee 12/22/86

White	Step 3
Goldendust	Step 2
Pink	Step 1
Canary	Employee

State of Michigan Plaza Building
1200 State Avenue
Detroit, Michigan 48225

Under the authority of Act 234
of 1976, as amended

ED NO. 35835

MOCR NO. 106785-EM16

CLAIMANT:	Marvin L. Vanek	RESPONDENT:	Michigan State Housing Development Authority
			Attn: Ms. Rita Yeakey, Personnel Director
ADDRESS:	5722 LeBaron Court East Lansing, Michigan 48823	ADDRESS:	Plaza One, 4th Floor 401 S. Washington Square Lansing, Michigan 48909

SUMMARY OF FINDINGS: The claimant, a 58 year old White man, alleges that because of his race and age, his authority as Director of Technical Services is being superceded and he is treated differently.

The respondent's spokesperson denied the allegations.

The claimant referenced several Black subordinates who he felt bypassed his authority but during the investigation he indicated that he wished to pursue only the matter of one Black subordinate whose time he had docked 1 1/2 hours for an unauthorized absence and whom he had advised that future requests for annual leave would not be granted until the employee cleaned out his "in-box". The claimant alleged the Deputy Director, a younger, Black man, reimbursed the Black subordinate for the 1 1/2 hours and informed him (claimant) that it was not in his purview to deny annual leave. He said on one occasion the Deputy had denied him annual leave, and that when he once had docked the pay of a White subordinate the Deputy had not intervened.

The Deputy Director and the Black subordinate were younger than the claimant, but the spokesperson denied that the claimant's age or race were considerations in the actions taken in the matter concerning the younger, Black subordinate. She said the claimant had signed

the subordinate's time report for the day in question, and the claimant agreed he did. She later notified the subordinate by memo that his pay would be docked and that any requests he might make for annual leave would be denied, leading to the subordinate's advance of a request was improper. He denied he ever disallowed a request by the claimant for annual leave, but he and the claimant both agreed that the claimant was once granted 10 days instead of the 13 requested. The Deputy said the length of the leave together with the claimant's job responsibilities were the factors he considered, but denied he had ever refused to grant annual leave to the claimant.

The claimant's secretary feels the claimant has been treated differently from his peers, but said this started before the Deputy was appointed. She mentioned issues not mentioned by the claimant regarding job title, and adequate help in the division.

The investigation did not support the claimant.

ORDER OF DISMISSAL THIS COMPLAINT IS DISMISSED ON THE FOLLOWING BASIS:

☒ Insufficient Grounds on which to Issue a Charge ☐ Withdrawn ☐ Adjusted ☐ Without a Finding
☐ Adjusted through Conciliation ☐ Lack of Jurisdiction

Date Dismissed: JUN 15 1979 Date Mailed: JUN 21 1989 /S/ Edward J. Chastang, Jr.
Director of Enforcement

RULES OF CIVIL RIGHTS COMMISSION AND DEPARTMENT RELATING TO RECONSIDERATION AND APPEAL

Rule 7 (1) A claimant may request of the department a reconsideration of its refusal to issue a charge. The request shall be in writing, state concisely the grounds upon which it is based, and be filed within 30 days after the date of mailing of the notice of disposition of which reconsideration is requested. It shall be filed at any office of the department by personal delivery or by mail.

(2) The department may authorize a hearing on the request for reconsideration at such time and place and before such hearing commissioner or commissioners or hearing referee or referees as it or the director may determine. And notice thereof shall be given to all parties to the proceedings.

Rule 18. Any party claiming to be aggrieved by a final order of the commission or the department, including without limitation a refusal to issue a charge, may appeal to the circuit court of the State of Michigan having jurisdiction provided by law within 30 days of the date of service of an acceptable order.



Michigan State Housing Development Authority

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401 South Washington Square, P.O. Box 30044

Lansing, Michigan 48909

State of Michigan
John Engler, Governor

Department of Commerce
Arthur E. Ellis, Director

M E M O R A N D U M

August 30, 1993

To: Jeanne L. Peterson

From: Carl V. Bryson *CVB*

Re: Dwight Robinson

I have reviewed the litigation files of the Office of Legal Affairs, with respect to the above-named person.

In none of the lawsuits referenced therein is Dwight Robinson named as a party either individually or in his official MSHDA capacity.

From our records, it does appear that a deposition was taken from Dwight Robinson on May 18, 1989, with respect to litigation related to Evergreen Estates, MSHDA No. 706 (see attachment). A copy of the deposition was not in the litigation file.

In a letter dated May 30, 1991, pertaining to the litigation involving Grayhaven, MSHDA No. 759, Dwight was listed as a "possible additional" deponent. No documentation is contained in our Grayhaven litigation file, which confirms that a deposition was actually taken. Ron Farnum has reviewed the Attorney General's Grayhaven files and confirmed that no such deposition was actually given.

Of necessity, this review involved only lawsuits wherein MSHDA was a named party. No information was available to me regarding testimony by Mr. Robinson with respect to lawsuits in which MSHDA was not a named party. The only exception in this regard was a lawsuit involving the termination of the management agent for Medical Center Village, MSHDA No. 302 (see attachment). Dwight provided deposition testimony with respect to this matter on January 31, 1986, February 7, 1986, and February 10, 1986, in Detroit, Michigan. However, transcripts are not contained in our files.

Please contact me if you have any questions.

INTEROFFICE MEMORANDUM

Date: 25-Aug-1993 01:25pm EST
 From: Rita Canady
 CANADY
 Dept: Human Resources
 Tel No: 373-8420

TO: Jeanne Peterson (PETERSON)
 TO: Richard Pennings (PENNINGS)
 CC: Wanda McEeken (MCEEKEN)

Subject: Dwight Robinson

I received a call from Dwight Robinson requesting information for his confirmation hearings with Ginnie Mae. Dwight needs to know any criminal, civil or administrative hearings in which he had a part as a defendant, plaintiff or witness.

I will be able to gather information relative to Dwight's involvement with Civil Rights or administrative hearings regarding MSHDA personnel but YOU will need to provide documentation regarding work related cases that he may have been involved in relative to Developers, contractors, developments etc. etc.

(Dwight remembered being involved in the Dumas and Grayhaven issues.)

The information should include:

- a. dates involved
- b. place action was recorded
- c. the issue involved
- d. specifics of Dwight's involvement (witness, plaintiff, defendant)

Of course, this information is needed ASAP.

If I can be of assistance, please let me know!

You can bring the information to me and I will forward all relevant info to Dwight.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

RICHARD CLAVON & ASSOCIATES, INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 87-729763-CH
Hon. Susan D. Borman

J. L. DUMAS & CO., ARC CONSTRUCTION
CO., EVERGREEN APARTMENTS LIMITED
DIVIDEND HOUSING ASSOCIATION,
a Michigan limited partnership,
MICHIGAN STATE HOUSING DEVELOPMENT
AUTHORITY, CITY OF DETROIT,
CRUDO BROTHERS CO., INC.,
and STANDARD PAINT COMPANY,
jointly and severally,

Defendants.

EVERGREEN APARTMENTS LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED PARTNERSHIP,
a Michigan limited partnership,

Plaintiff,

-vs-

Case No. 88-824070-CK
Hon. William J. Giovan

J. L. DUMAS & COMPANY, a Michigan
corporation, and ARC CONSTRUCTION, INC.,
a Michigan corporation, individually
and as a joint venture and RELIANCE
INSURANCE COMPANY, a Pennsylvania
insurance corporation,
jointly and severally,

Defendants.

-and-

MICHIGAN STATE HOUSING DEVELOPMENT
AUTHORITY,

Intervening Plaintiff,

-vs-

(continued)

PLEASE TAKE NOTICE that the following depositions upon oral examination will be taken on the dates indicated below:

Gary Nesbitt	Tues., May 16, 1989	- 9:30 a.m.
Tom Jones	Tues., May 16, 1989	- 1:00 p.m.
Marv Vanek	Tues., May 16, 1989	- 2:30 p.m.
Dick Ratzloff	Thurs., May 18, 1989	- 9:30 a.m.
Dwight Robinson	Thurs., May 18, 1989	- 10:30 a.m.
Rob Sherke	Thurs., May 18, 1989	- 12:30 p.m.
Doug Mernitz	Thurs., May 18, 1989	- 2:00 p.m.

at the offices of MSHDA, 401 S. Washington Street, Lansing Michigan. Said depositions are to be taken in accordance with the provisions of MCR 2.302, 2.305 and 2.306. Deponents a

J. L. DUMAS & COMPANY, a Michigan corporation, and ARC CONSTRUCTION CO., a Michigan corporation, individually and as a joint venture, and RELIANCE INSURANCE COMPANY, a Pennsylvania corporation, jointly and severally,

Defendants.

-and-

EVERGREEN APARTMENTS LIMITED
DIVIDEND HOUSING ASSOCIATION LIMITED
PARTNERSHIP, a Michigan limited partnership,

Third-Party Plaintiff.

-vs-

SIMS VARNER AND ASSOCIATES, INC.,

Third-Party Defendant.

Jeffrey A. Ishbia (P23812)
Ben T. Liu (P27467)
KRAMER, MELLEN, WAGNER & ISHBIA, P.C.
Attorneys for Defendants J. L. Dumas
& Co., Arc Construction Co. and
Reliance Insurance Co.
3000 Town Center, Suite 1700
Southfield, Michigan 48075
(313) 353-5500

Harvey J. Zameck (P22687)
Attorney for Plaintiff

Ronald P. Strote (P23333)
Attorney for MSHDA only

Cyril Abramson (P10020)
Attorney for Crude Brothers, Inc.

Peter G. Rhoades (P32037)
Attorney for City of Detroit

Steven A. Finegood (P32157)
Attorney for Standard Paint Co.

David S. Snyder (P20749)
Stanley Weingarden (P22118)
Attorney for Evergreen Apt. LDHA

1.000
-200

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MCV LIMITED DIVIDEND HOUSING
ASSOCIATION, LTD. PARTNERSHIP,
a Michigan limited partnership by
and through Wingate Development
Corporation, its managing general
partner,

Hon. Louis Simmons, Jr.

Plaintiffs

Civil Action
No. 86-600258 CZ

v.

CLARENCE WHITE, an individual and
C.C. WHITE & ASSOCIATES, INC., a
Michigan corporation,

Defendants.

Elliott S. Hall (P 14546)
400 Renaissance-35ch, Det MI 48243
(313) 568-6800

Harrison H. Young (P 22642)
Frederick A. Patmon (P 18695)
P.O. Box 315189 Det MI 48231
(313) 567-7050

Randall Whitworth (P)
Assistant Attorney General
Suite 3, Plaza One Bldg.
401 S. Washington Sq, Lansing MI 48933
(517) 373-9100

NOTICE

TO: CLERK OF SAID COURT

Randall Whitworth
Ste 3, Plaza One Bldg
401 S. Washington Square
Lansing MI 48909


Elliott S. Hall
400 Renaissance Center
35ch Floor
Detroit, Michigan 48243

Take notice that the attorneys for the parties and nonparty
Michigan State Housing Development Authority (MSHDA) have agreed:

1. To adjourn Defendants' Motion to Compel Compliance with
Subpoena Duces Tecum served on MSHDA notice² for hearing January
31, 1986 at 9:00 a.m. without date.

2. To commence the taking of MSHDA's deposition at its Detroit Office Friday, January 31, 1986 at 10:00 a.m. through one of its designees, Dwight Robinson, and produce thereat the documents subpoenaed.

3. To adjourn the deposition of Plaintiffs scheduled to re-commence today at 3:30 p.m. until about Thursday, January 30, 1986, at 10:00 a.m., the time to be reconfirmed by Plaintiffs' counsel, Elliott Hall.


Frederick A. Patmon (P 18695)
P.O. Box 315189
Detroit MI 48231
(313) 567-7050

January 28, 1986

David S. Snyder (P20749)
 Stanley Weingarden (P22118)
 Attorney for Evergreen Apt. LDHA

NOTICE OF TAKING DEPOSITIONS DUCES TECUM

TO: All Attorneys of Record

PLEASE TAKE NOTICE that the following depositions upon or examination will be taken on the dates indicated below:

Gary Nesbitt	Tues., May 16, 1989	- 9:30 a.m.
Tom Jones	Tues., May 16, 1989	- 1:00 p.m.
Marv Vanek	Tues., May 16, 1989	- 2:30 p.m.
Dick Ratzloff	Thurs. May 18, 1989	- 9:30 a.m.
Dwight Robinson	Thurs. May 18, 1989	- 10:30 a.m.
Rob Sherke	Thurs., May 18, 1989	- 12:30 p.m.
Doug Mernitz	Thurs., May 18, 1989	- 2:00 p.m.

at the offices of MSHDA, 401 S. Washington Street, Lansing Michigan. Said depositions are to be taken in accordance with the provisions of MCR 2.302, 2.305 and 2.306. Deponents are required to bring with them any and all MSHDA files, record notes, minutes or documents pertaining to the above-captioned matter and Evergreen Estates Project (MSHDA #706), including but not limited to change order committee meeting minutes or notes, staff feasibility committee minutes or notes, staff loan committee minutes or notes, design committee meeting minutes or notes, cost estimates prepared and/or reviewed by MSHDA and staff feasibility reports.

You are invited to attend and cross-examine the deponents.

KRAMER, MELLEN, WAGNER & ISHBIA, P.C.

Dated: May 8, 1989

By:

Ben T. Liu
 Ben T. Liu (P27467)

Attorneys for Defendants J.L.
 Dumas & Co., Arc Construction
 Co. and Reliance Insurance Co.

MAY, GOWING, SIMPSON & STROTE

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS
100 WEST LONG LAKE ROAD, R.O. BOX 341
GLOOMFIELD HILLS, MICHIGAN 48013TELEPHONE (313) 646-0300
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DAVID M. GUSOW
ROBERT J. LAWYER
DETROIT OFFICE
333 WEST FORT STREET
SUITE 1310
DETROIT, MICHIGAN 48226RICHARD M. MAY
SCHEMER C. GOWING III
THOMAS C. SIMPSON
RONALD P. STROTE
STEVEN M. BAYBROOK
HART JO TEEL
JOHN A. FOREST
RALPH J. BIRLIN
ALLISON O. DANIELS
JANICE WITZIGRALL
HART A. HAMONET

* ALSO ADMITTED IN ALABAMA

TELECOPIER MESSAGE

TO: MARY LEVINE	DATE: MAY 9, 1989
FIRM:	SENDER: RONALD P. STROTE
FAX PHONE:	FAX PHONE: (313) 646-4648

MESSAGE

Re: Richard Clavon & Associates, Inc. v J.L. Dumas &
Co., et al - Case No. 87-729763-CH

Dear Ms. Levine: *Mary*

Attached is a copy of the Notice of Taking Depositions
Duces Tecum with respect to the above-captioned matter.

Please do not hesitate to contact our office with any
questions that you may have in connection with the enclosure.

Very truly yours,



RONALD P. STROTE

PREPARED STATEMENT OF JOHN A. KNUBEL NOMINEE FOR CHIEF FINANCIAL OFFICER OF HUD

Mr. Chairman, Members of the Committee, I would like to begin by thanking you for considering my qualifications for the position of Chief Financial Officer at HUD. I would also like to thank the President and Secretary Cisneros for the trust they have shown in nominating me and John Koskinen, Deputy Director for Management at OMB and Ed De Seve, my predecessor at HUD, who helped recruit me to it.

Finally, I want to thank my wife, Carole, who could not attend today because she is with her mother who's undergoing surgery—specifically because I'll continue to try her patience in the future, as I have in the past, because the long hours which we both know this job will require.

In many, many respects, the opportunity to become the Chief Financial Officer of HUD fulfills objectives first set over 30 years ago when a student at the Naval Academy and reaffirmed as a graduate student at Oxford studying political philosophy and economics—to fill an important position of responsibility at the highest level of public service.

I deeply believe in the ethic of this country: equal opportunity, a level playing field on which people can better themselves through the dignity of hard work, education, and personal freedom. I wasn't born poor nor was I born into a wealthy family. My paternal roots are Irish, Dutch, and German from the east side of New York. My Dad inculcated me with the spirit and love of this country which twice caused him to leave school and profession to volunteer for service in two world wars. Service for him was a privilege and I hope I still have some of that spirit alive in me.

I bring to this opportunity a diverse background of professional and managerial experience in banking, real estate, and insurance. Management is not easily defined. But Peter Drucker, who would probably be the U.S. Nobel Laureate of management science, if there were one, defines it as "doing the right thing efficiently." When I first heard this definition, I felt it was vacuous and perhaps trite. But the more I think about it and experience management in various contexts, the more wisdom this simple statement holds for me.

Good management is defining objectives, organizing and leading people (and other resources) to achieve those objectives, and then measuring results. A good manager then sets objectives, and measures results, while at the same time reorienting efforts in light of lessons learned, technological and other environmental changes.

For large organizations like HUD, therefore, good management means, among other things, establishing control, defining customers and product delivery processes and ensuring adequate information systems and controls are in place so that effectiveness, efficiency and results can be measured. It means sizing our programs to fit our resources. It means followup and review. This is a major challenge for HUD and one where the CFO can make a major contribution.

If confirmed, I look forward to: (a) the opportunity to put my technical, managerial, and leadership skills to work for the benefit of purposes I believe in deeply in a new, public sector Government environment; (b) an opportunity to work with people whose capabilities I deeply respect—the current management team at HUD; and (c) an opportunity to participate in the restructuring and reorienting of the country's housing and related policies at a very critical time in our Nation's history—as we learn to live within our means as a Nation and society.

My first exposure to the problems of poverty and housing was as a young teenager measuring tenement apartments working for my father who was an architect on the lower east side of Manhattan in preparation for renovation. In this situation I witnessed first hand the problems of poverty, but also witnessed the progress that can be made toward solving them when renovations are completed.

As an investment executive and banker, I have witnessed first hand the valuable role which FHA and GNMA loan guarantees play in supplying liquidity to mortgage markets. My daughter, her husband, and their 9-month-old daughter (my first grandchild) just purchased their first home which would not have been possible had it not been for FHA insurance. So I've personally witnessed the continued contribution these programs make in peoples lives.

In today's "mixed" economy where the Government plays such an important role, each sector can learn valuable lessons from the other. My background of increasing responsibility in both sectors positions me to make a unique contribution, I believe, in this regard by bringing a different perspectives to some of the financial management challenges facing HUD today.

As a banker for 10 years and as the head of a real estate operations in Florida (Centennial) and at USAA Financial Services Company, I learned how real estate projects are structured and financed and the general market environment in which HUD "does business" and which we seek to influence for the benefit of the poor and

disadvantaged among us. I have seen the profit motive and free market stimulate positive change and innovation. But I have also seen market faults—failures in the free market to meet legitimate human needs and therefore I understand something of the role Government and HUD needs to continue to play.

My experience in the Government sector has mirrored in many ways my private sector development. I returned to Washington in 1990 and watched the evolution of the CFO Act which followed on from the Federal Manager's Financial Integrity Act and the subsequent passage of the Government Performance and Results Act and the National Performance Results Act legislation.

Given my background, it was natural that I should be drawn to their implementation Government-wide. My Government background and preparation for this job was supplemented by experience in the actual application of the CFO Act at the Nuclear Regulatory Commission (as Senior Adviser to its CFO) and the development and partial implementation of a new systems modernization strategy at the Federal Retirement Thrift Investment Board. It is here that I became familiar with large complex systems integration management—a major challenge for the Government as a whole and for HUD in particular. These experiences will, believe, help me to contribute to these critically important problems and this that will be one of my primary areas of concentration if confirmed as CFO at HUD.

You have been provided with a full copy of my qualifications statements, as well as other requested information. I look forward to discussing these qualifications further with interested Members and/or staff of the Committee and answering any questions you may wish to ask me now verbally or for the record in writing.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: KNUBEL JOHN A.
(LAST) (FIRST) (OTHER)

Position to which nominated: CHIEF FINANCIAL OFFICER, HUD Date of nomination: 04 AUG 1995

Date of birth: 05 07 39 Place of birth: NEW YORK CITY
(DAY) (MONTH) (YEAR)

Marital status: MARRIED Full name of spouse: CAROLE T. KNUBEL

Name and ages of children: DIANA RUTH HARMON 29
SUZANNE MICHELLE KNUBEL 28
CHRISTINE MARIE KNUBEL 26

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>BROWN UNIVERSITY</u>	<u>1957-58</u>	<u>NONE</u>	
	<u>U.S. NAVAL ACADEMY</u>	<u>1958-62</u>	<u>B.S. (Math)</u>	<u>JUNE 1962</u>
	<u>OXFORD UNIVERSITY</u>	<u>1963-66</u>	<u>B.A. *</u>	<u>JULY 1966</u>
	<u>OXFORD UNIVERSITY</u>	<u>1963-66</u>	<u>M.A. *</u>	<u>FEB. 1995</u>

* Politics, Philosophy and Economics

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

RHODES SCHOLARSHIP/BURKE SCHOLARSHIP
MERITORIOUS SERVICE MEDAL (U.S. NAVY)
CLASS OF 1897 AWARD FOR LEADERSHIP AND OTHER SIMILAR AWARDS
AT U.S. NAVAL ACADEMY
COLLEGE PRIZE/FIRST CLASS HONORS DEGREE AT OXFORD UNIVERSITY

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

<u>Organization</u>	<u>Office held (if any)</u>	<u>Dates</u>
<u>WLRN PUBLIC TV CO</u>	<u>BOARD MEMBER</u>	<u>6/87 - 2/90</u>
<u>KAPPA SIGMA SOCIAL FRATERNITY</u>	<u>NONE</u>	<u>1957 - 58</u>
<u>ASSOC. OF GOVT. ACCOUNTANTS</u>	<u>NONE</u>	<u>1991 - PRESENT</u>
<u>INST. OF CHARTERED FIN. ANALYSTS</u>	<u>NONE</u>	<u>1992 - PRESENT</u>
<u>ASSOC. FOR INVESTMENT MGT & RESEARCH</u>	<u>NONE</u>	<u>1992 - PRESENT</u>
<u>YOUNG LIFE D.C.</u>	<u>TREASURER</u>	<u>1992 - PRESENT</u>
<u>DOMINION INSIGHT GROWTH FUND</u>	<u>BOARD MEMBER</u>	<u>1991 - PRESENT*</u>

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1958-1972	<u>UNITED STATES NAVY</u>	
1958-62	MIDSHIPMAN	U.S. NAVAL ACADEMY
1962-63	ENSIGN, ASST. ENGINEER	U.S.S. BANG (SS-388)
1963-66	ENSIGN/LT.(J.G.)	STUDENT AT OXFORD
1966-67	LT.(J.G.)/LT., ENGINEER	U.S.S. COBBLER (SS-344)
1967-69	LT., ENGINEER/OPS OFFCR.	U.S.S. TROUT (SS-583)
1969-70	LT., RESOURCE ANALYST	OFFICE OF SEC/DEF (SYSTEMS ANALYSIS)
1970-72	LT.CDR., MIL. ANALYST	NATL SECURITY COUNCIL (STAFF OF DR. KISSINGER)
1972-73	ASST. DIR. FOR PROGRAM ANALYSIS	NATL SECURITY COUNCIL (STAFF OF DR. KISSINGER)
1973-74	DEP.ASST.ADMINISTRATOR FOR INTERNATIONAL AFFAIRS	FEDERAL ENERGY ADMIN.

[SEE PAGE 2A FOR CONTINUATION]

* I have agreed to resign upon confirmation.

PAGE 2A -- CONTINUATION OF EMPLOYMENT RECORD

1974-84	<u>VICE PRESIDENT, CHASE MANHATTAN BANK</u>	
1974-77	DIR. OF FINANCIAL ANALYSIS, BUDGETING & PLANNING	INTERNATIONAL DEPT NEW YORK CITY
1977-80	CHIEF OF STAFF, DIVISION EXECUTIVE	MID-EAST BANKING GROUP EASTERN ARAB STATES DIV. (ATHENS)
1980-84	DIVISION EXECUTIVE	INSURANCE BANKING GROUP NEW YORK CITY
1984-86	PRESIDENT	CENTENNIAL REAL ESTATE MGT. & INVESTMENT COMPANY ORLANDO, FLORIDA
1986-89	<u>USAA FINANCIAL SERVICES CO, SAN ANTONIO, TX</u>	
1986-88	PRESIDENT PRESIDENT OF: - REAL ESTATE CO - INSURANCE CO - INVESTMENT MANAGEMENT CO	FINANCIAL SERVICES DIV.
1988-89	CHIEF ADMINISTRATIVE OFFICER	
1989-90	INDEPENDENT CONSULTANT TO VARIOUS CLIENTS INCLUDING VAUGHN, NELSON, SCARBOROUGH AND McCONNELL INVESTMENT MANAGEMENT CO (HOUSTON, TX) AND INVESTORS OF FLORIDA (WEST PALM BEACH, FLA) [Located in San Antonio, TX]	
1990-92	VICE PRESIDENT (PROGRAM DEVELOPMENT)	LOGISTICS MGT. INSTITUTE McLEAN, VA
1992-94	SENIOR ADVISOR TO CHIEF FINANCIAL OFFICER	NUCLEAR REG. COMMISSION ROCKVILLE, MD
1994 (1)	INDEPENDENT CONSULTANT	POTOMAC, MD
1994-95	SENIOR ADVISOR TO DIRECTOR, AUTOMATED SYSTEMS OFFICE	FED. RETIREMENT THRIFT INVESTMENT BOARD WASHINGTON, D.C.
1995 - PRESENT	CFO DESIGNATE	HUD WASHINGTON, D.C.

(1) For a five month period in 1994, I consulted for the National Housing Partners Company, doing a strategic analysis of their captive insurance subsidiary, cash management operations and associated strategic marketing opportunities. During that time, I also consulted for the Braddock Group, McLean, VA, in the general area of finance.

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

(1) SEE ABOVE FOR DIRECT GOVERNMENT EXPERIENCE

(2) AS A PRINCIPAL AT THE COUNCIL ON EXCELLENCE IN GOVERNMENT, I HAVE
SERVED ON SEVERAL CONSULTATIVE PANELS ASSOCIATED WITH FINANCIAL
MANAGEMENT AND OTHER SUBJECTS ASSOCIATED WITH THE MANAGEMENT OF
GOVERNMENT.

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

NONE

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

NONE

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

NONE

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

(attach sheet)

(SEE PAGES 4A-B)

Future employment

relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Upon confirmation, I have agreed to resign my Board Seat on the Dominion Insight Growth Fund. There are no others to be severed. I am now serving in the capacity of CFO Designate at HUD (as a limited term SES).

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NONE. No plans

3. Has anybody made you a commitment to a job after you leave government?

NO

4. ☒ Do you expect to serve the full term for which you have been appointed?

YES

Qualification Statement for JOHN A. KNUBEL
Chief Financial Officer Designate
Department of Housing and Urban Development

Undergraduate study at the Naval Academy (1962) and graduate study at Oxford University, where I received a Masters Degree in politics, philosophy and economics, gives me an understanding of the fundamentals of economics, finance, financial markets and government operations. This background contributed to the success I've experienced thus far in a career divided between the public and private sectors in positions of increasing responsibility. In addition, I have over 25 years experience in financial systems, financial analysis, strategic planning, programming and budgeting in both the private and public sectors.

The same managerial and knowledge qualifications which created this track record qualify me to be the Chief Financial Officer (CFO) of the Department of Housing and Urban Development (HUD), which, if confirmed, would constitute the most responsible job I have undertaken to date in the public sector, about equivalent to what I have experienced in private industry.

Experience in the Public and Private Sectors is a Unique Qualification

Private and public sector financial management is similar in many aspects, but also very different. In today's "mixed" economy where the government plays an important role, and still depends on the private sector, each can learn valuable lessons from the other. My background of increasing responsibility and achievement in both sectors positions me to make a unique contribution in this regard.

I Have Learned First Hand About the Importance of Excellent Financial Management

My 15 years experience in the private sector started at the Chase Manhattan Bank (1974), where I established a budgeting and planning operation for the International Department covering over 104 branches and over \$25 Billion in assets. Chase represented my first experience in applying budgeting and planning discipline to large, complex financial organizations. Subsequent experience included being the Chief of Staff to the Head of the Middle East Banking Group and the Director of all Chase operations in the Eastern States Division of the Middle East and all Chase Operations with the Insurance Industry. This included managing large, complex banking relationships and organizations where multimillion dollar loan decisions were based on the integrity, timeliness and visibility of relevant financial information.

When I gained responsibility for a multimillion dollar insurance loan portfolio, I developed a first hand appreciation for the importance of excellent financial management since it was this ply the personal integrity of the borrower, that one relied on to measure and forecast the ability of borrowers to repay and evaluate when their capacity to carry a given debt burden had been exceeded.

I observed then that borrowers do not commonly discipline themselves. The decision to stop borrowing (and therefore lending) is normally made by the lender. The deficit debate today is not about whether government borrowing can continue but whether it should. Being CFO of HUD will not require my taking an direct position on this important matter. But no matter what one believes about whether government borrowing has gone too far, the imperative is that whatever the level of government spending and deficit, the use of financial resources be tightly controlled and financial reports adequately and fairly represent reality. Hence, my interest and commitment to applying professional financial management to government.

Experience in the Real Estate Industry,
HUD's Primary Supplying Industry

Both as the President of Centennial Property Management Co. and as the Executive responsible for the Real Estate Operations at the USAA Financial Services Company, an \$11 Billion diversified financial services company, I operated in the real estate sector of the economy. I learned how real estate projects are structured and financed and the general market environment in which HUD "does business" and influences for the benefit the poor and disadvantaged among us.

In-Depth Experience in Public Sector Financial Management

My 15 years of experience in the government sector has mirrored in many ways my private sector development but with a particular focus, in the past five years, on the implementation of the CFO Act and related legislation. My government experience started while serving as a Naval Officer in the Pentagon and as part the National Security Council Staff (1969-1970). After leaving the Navy, I continued to serve as a civilian on the NSC staff and as Deputy Assistant Administrator at the newly-formed predecessor the Department of Energy, the Federal Energy Agency.

During this period, I observed, learned and participated in the application of modern management techniques to Defense Planning right after the departure of Mr. McNamara while his management ideas were still fresh to the Pentagon. I noted the scrutiny which time exposes to such ideas and which resulted in the incorporation of some ideas of merit and the elimination of others that did not suit the public sector environment. Many of those that survived have been projected into the civilian sector of government.

Since 1990, I Have Focused on Building Expertise in the CFO Act and Related Legislation

Following the 15 year career of increased responsibility and achievement in Banking, Insurance and Real Estate industries, I returned to Washington in 1990 and watched the evolution of the CFO Act which followed on from the Federal Manager's Financial Integrity Act (FMFIA) and the subsequent passage of the Government Performance and Results Act (GPRA) and the National Performance Results Act (NPR) legislation.

Given my previous background in government, it was natural I should be drawn to their implementation government-wide. While with the Logistics Management Institute (LMI) as program development Vice President, for example, I organized the Institute to help agencies implement the requirements of the CFO Act. My preparation for this job as CFO of HUD was rounded out by two important experiences in the actual application of the Act (as Senior Advisor to the CFO of the Nuclear Regulatory Agency (NRC) and its controller) and the development and partial implementation of a systems strategy for the Director of Automated Systems at the Federal Retirement Thrift Investment Board (FRTIB). (The FRTIB oversees the largest 401K deferred tax investment plan in the world with over 2.1 million participants and over \$ 30 Billion in managed funds. It also compares very favorably to the private sector in terms of cost efficiency.) It is here that I became familiar with large complex systems integration management which is a major challenge for the government as a whole and HUD in particular (as well as for the private sector). This experience will help me to contribute to this critically important problem and it is this area that will be a major area of concentration if confirmed as CFO at HUD.

Finally, I have studied and evaluated many factors in the weeks awaiting confirmation as the CFO designate and believe I can contribute towards the continued correction of widely recognized system related and general management problems in the Department.

I look forward to discussing these qualifications further with interested Members and staff of the Committee.

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

NONE. THE NATIONAL HOUSING PARTNERS MANAGES MANY HUD-SUBSIDIZED PROPERTIES. AS A PRIVATELY INCORPORATED COMPANY AND GOVERNMENT CONTRACTOR, MY RELATIONSHIP WITH THEM IS ENDED, BUT THE DETAILED KNOWLEDGE SO GAINED MAY HELP ME BETTER PROTECT THE GOVERNMENT'S INTEREST.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I am not aware of any potential conflict of interest that could be alleged.

civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

While with the NRC (11/93), I was the subject of an IG investigation stemming from accusations of inappropriate conduct under the "Whistle Blower" Act. I was cleared of all charges.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

**PREPARED STATEMENT OF HALBERT C. DeCELL III
NOMINEE FOR ASSISTANT SECRETARY FOR CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS AT HUD**

Chairman D'Amato, Senator Sarbanes, and Members of the Committee. Thank you for the opportunity to appear before you today.

Before I begin, however, I would like to "thank my family, my wife, Jane, and my three children—Carrie (10), Clay (8), and Charlie (4)—for their patience, endurance, and support through this process. In addition, I would like to thank my Senators, Mr. Cochran and Mr. Lott as well as Senators Bond and Heflin for their counsel and encouragement through the years.

It is indeed a great honor and privilege to have been nominated by President Clinton for the position of Assistant Secretary of Congressional and Intergovernmental Relations at the Department of Housing and Urban Development. I also deeply appreciate the confidence and trust that Secretary Cisneros has placed on me, in recommending me for this position. If confirmed, I will welcome the opportunity to serve as part of this Administration.

By way of background, I spent more than 17 years in a variety of capacities with Congressman Jamie Whitten from Mississippi, including Associate Staff on the House Appropriations Committee which Mr. Whitten chaired. During my tenure with the Chairman, I came to share his strong belief in, and respect for, Congress not only as an institution, but as the embodiment of the people's will.

Starting as Press Assistant in 1977, working up to Legislative Director, and then becoming his Chief of Staff, I learned the wisdom of Congressman Whitten's view that, while it was essential to air ideas and fight for principle, it was just as essential that, at the end of the day, the Administration and Congress had come together to build a better tomorrow for all of our citizens.

He emphasized to me the need to listen to and work with local and State officials, as well as national organizations, to try to build a consensus through common goals. Like him I came to believe that while Government could not, and should not, try to do everything for everyone, it could help people and communities help themselves.

I came from a small delta community in Mississippi where my father was the owner and publisher of a weekly newspaper. He always maintained that when we realized we all had a stake in our community, we would all work to improve it. It is the same lesson that Secretary Cisneros, on a larger scale has been giving.

Working with the 13 Appropriations Committees in the House, including VA, HUD, and independent agencies, I gained a working knowledge of the wide range of programs at HUD, and the necessity for improving program delivery.

Similarly, in the 5 weeks that I have been a Special Assistant at HUD, I have been impressed with the dedication and commitment to improving programs and serving the customer that the Secretary and the entire HUD team has set as it's goal.

Given the current environment of increasing need and decreasing resources, but the strong belief in the necessity of HUD'S mission—affordable, decent housing, and assistance to our core communities—Secretary Cisneros and this Administration developed a proposal to do more with less—The American Community Partnership Act.

Already streamlined through administrative changes to deal with new budget realities, HUD has put forward a legislative package that would preserve the substantial investments that have been made in affordable housing and urban infrastructure, while providing more flexibility to localities and choice to tenants.

The Secretary has also been working with this Committee and its counterpart in the House to provide a framework to deliver HUD programs even more efficiently and effectively.

The priorities have been established: helping the homeless; aggressively reducing the number of severely distressed public housing units; increasing home ownership; giving communities the tools and flexibility needed to create jobs and improve the quality of urban life; and providing affordable housing.

To meet these challenges, the Department and Congress must work together. I view my role as facilitating the communications between HUD, Congress, our cities and States and representative organizations, as well as others with an interest in housing and community development.

I will represent HUD and the Administration before Congress and make certain that Congressional concerns are represented to the Secretary and the HUD team.

I pledge to you my best efforts to work with this Committee and Congress to address the issues that are facing our cities and to keep you informed of actions taken by the Department of Housing and Urban Development.

Thank you for your consideration of my nomination and I will be happy to answer any questions that you might have at this time.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: DECELL ^(LAST) HALBERT ^(FIRST) CLAYTON ^(OTHER)

Position to which ASSISTANT SECRETARY FOR CONGRESSIONAL Date of
nominated: AND INTERGOVERNMENTAL RELATIONS AT HUD nomination: _____

Date of birth: 23 06 49 Place of birth: HOUSTON, MISSISSIPPI
(DAY) (MONTH) (YEAR)

Marital status: MARRIED Full name of spouse: JANE HAMMOND BEAZLEY DECELL

Name and ages
of children: CAROLINE M. DECELL (10) _____
H. CLAYTON DECELL (8) _____
CHARLES P. DECELL (4) _____

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>GEORGE MASON UNIVERSITY</u>			
	<u>SCHOOL OF LAW</u>	<u>1977-1981</u>	<u>JD</u>	<u>1981</u>
	<u>TULANE UNIVERSITY</u>	<u>1967-1971</u>	<u>BA</u>	<u>1971</u>
	<u>ROLLING FOX HIGH SCHOOL</u>	<u>1963-1967</u>	<u>HIGH SCHOOL DIP.</u>	<u>1967</u>
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
<u>ALL SAINTS EPISCOPAL CHURCH</u>		<u>1984 - PRESENT</u>
<u>D.C. BAR</u>		<u>1981 - PRESENT</u>

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

- ① CONSULTANT, DEPT. OF HOUSING AND URBAN DEVELOPMENT - LEGIS; July 31-~~present~~
- ② UNEMPLOYED JAN. 2, 1995 TO JULY 30, 1995
- ③ CONGRESSMAN JAMIE L. WHITTEN (JULY 15, 1977 TO JAN. 2, 1995):
 - (A) ADMIN. ASST. / APPROPRIATIONS COMMITTEE ASSOCIATE STAFF (1-91 to 1-95)
 - (B) LEGISLATIVE DIRECTOR / APPROPRIATION ASSOCIATE STAFF (4-82 to 12-90)
 - (C) LEGISLATIVE DIRECTOR / PRESS ASST. (7-77 to 4-82)
- ④ ASSISTANT, HOUSE VETERANS AFFAIRS COMMITTEE (7-76 to 12-76)
- ⑤ COOK, SANDPIPER RESTAURANT (OCEAN CITY, MD) (6-75 to 10-75)
- ⑥ REPORTER, ASST. SPORTS EDITOR - DELTA DEMOCRAT TIMES
NEWSPAPER, GREENVILLE, MS. - (6-73 to 5-75)
- ⑦ FAST FOOD MANAGER / CASHIER, ETC - SIZZLEBIRD RESTAURANT,
NEW ORLEANS, LA., (ABOUT 6-72 TO 4-73) - INTERMITTENTLY

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

AS STAFFER FOR CONGRESSMAN JAMIE L. WHITTEN (D-MS)
FROM 7-77 TIL 1-95, I HAD CONSTANT CONTACT WITH
ALL LEVELS OF LOCAL, STATE AND FEDERAL GOVERNMENT AND
WORK^{ED} WITH EACH WITH REGARD TO FEDERAL PROGRAMS AND
LEGISLATION; SIMILAR, BUT MORE RESTRICTED, EXPERIENCE WITH
HOUSE VETERANS AFFAIRS COMMITTEE. (9-76 TO 12-76)

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

AS A REPORTER AND ASSISTANT SPORTS EDITOR OF THE
DELTA DEMOCRAT TIMES, NEWSPAPER IN GREENVILLE, MS,
FROM 6-73 TO 5-75, I HAD BY-LINED STORIES ON LOCAL EVENTS.
ALSO WROTE ~~THE~~ COLUMNS FOR FATHER'S WEEKLY PAPER
(THE DEER CREEK PILOT) IN ROLLING FORK, MS. FROM GRAMMAR
SCHOOL THROUGH HIGH SCHOOL

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

NONE

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

ATTACHED

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

PRESENTLY EMPLOYED AS A CONSULTANT BY HUD

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

PERHAPS CONGRESSIONAL EMPLOYMENT

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

YES

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

NONE

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

NONE

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

NONE

**PREPARED STATEMENT OF ELIZABETH K. JULIAN
NOMINEE FOR ASSISTANT SECRETARY FOR FAIR HOUSING AND
EQUAL OPPORTUNITY AT HUD**

Chairman D'Amato, Senator Sarbanes, and Members of this distinguished Committee, I appreciate the opportunity to appear before you today. I want to at the outset acknowledge and thank my husband, Ed Cloutman, and my son, Edward, who cannot be here with me today in person, but who I know are here in spirit. As you may know from my resume, I live in Dallas, Texas. When I was given the opportunity to serve in this Administration as Deputy General Counsel for Civil Rights and Litigation at HUD, our family had a difficult decision to make. My husband is a lawyer with an active law practice. My son is an 11 year old with an active career in baseball, basketball, or football (depending on the season) who is quite sure that Lakewood Elementary School in Dallas, Texas cannot get along without him. However, we were thrilled that I had been asked to come to Washington to serve in Secretary Cisneros' administration at HUD and in doing so serve our country on matters that we believe are very important. After long family discussions, we agreed that they would hold down the fort at home and I would come to Washington and return home on the weekend. (Needless to say, I am an advantage platinum flyer.) It hasn't been easy, but actually I find that it helps maintain a healthy balance to drop back into the real world at the end of each very long week, doing Mom things and spending time with people for whom the latest beltway happenings are not a high priority. However, I must acknowledge the very real sacrifice that my guys are making and to thank them for their love and support during this past 2 years, and their continued commitment to this adventure with me.

I am both honored and humbled by my nomination by President Clinton to be Assistant Secretary for Fair Housing and Equal Opportunity at HUD. Honored because I have dedicated much of my professional career to fighting housing discrimination, and its corrosive effects on the fabric of our country. Being asked to serve in the position responsible for enforcement of our fair housing laws at HUD represents a culmination of that work, and presents an opportunity to serve in a different and in many ways more challenging arena. I am humbled because I know how important it is that this job be done well and in such a way as to bring respect and support for the principles which are embodied in the Fair Housing Act.

As my resume indicates, prior to coming to HUD I was for almost 20 years a legal advocate for people who were poor and many who felt that they had been victimized by discrimination. I understand that perspective. However, in the course of that representation, I also came to understand the limits of legal advocacy, and the importance of people and communities coming together, rather than facing off, to effectively address the difficult problems of discrimination. I believe from my own experience that reasonable people can come together to resolve many of these issues, and that leadership that encourages such coming together to find common ground on the difficult issues of race and other forms of invidious discrimination should be encouraged.

The Office of Fair Housing at HUD has statutorily mandated responsibilities contained in several civil rights statutes and Executive Orders, including Title VI of the Civil Rights Act of 1964 and The Fair Housing Act. However, HUD FHEO's role can essentially be divided into two general categories: enforcement of the Fair Housing Act, and program compliance activities.

The challenge presented to FHEO is to fulfill those responsibilities in a way that is consistent with the Department's mission to work cooperatively and constructively with communities and other recipients, as well as to, in the enforcement context, deal with both complainants and respondents in a timely and fair manner.

The Fair Housing Act mandates that HUD receive and investigate all colorable complaints of housing discrimination filed with it. I am committed to insuring that those investigations are conducted in a timely and professional manner, recognizing that no one likes being discriminated against and no one likes being accused of discrimination. As soon as possible after a complaint is filed, HUD should determine if there is basis for and interest in conciliation of the complaint, and seek to resolve the matter. In fact, in the past 2 years the conciliation rate has risen to almost 50 percent of the cases handled under the FHA. This trend is consistent with my view that HUD's role should be to reach a satisfactory resolution as early in the process as possible. Of course, where such resolution is not possible, HUD has the duty to issue a charge of discrimination, and the parties have their choice of forums for an independent judicial evaluation of their claims.

I know that there have been problems in the past with what some would characterize as excessive enforcement activity. I believe that, to the extent that this problem exists, it can be effectively addressed with a strong message from the top that

effective enforcement does not mean strong-arm tactics or other inappropriate investigative or conciliation techniques, and that such conduct will not be tolerated. It can also be addressed by appropriate and focused training of FHEO staff which is underway. Finally it can be addressed by clear and concise guidance as to the issues and the law involved, which will be contained in the soon to be published intake, investigation, and conciliation manual, the first set of comprehensive guidance developed to assist fair housing enforcement personnel in doing their job since the fair housing amendments were passed in 1988.

I know that concern has been expressed that HUD had ventured out of the mainstream of fair housing enforcement into what might be characterized as more exotic realms, including proposed rulemaking with regard to property insurance discrimination and fair lending. As you know, after exploring the efficacy of negotiated rulemaking with regards to property insurance, I decided in August not to pursue rulemaking on that issue, though we will continue to investigate individual complaints of insurance discrimination. With regard to fair lending rulemaking, I have heard from lenders that they would like some guidance as to how the Department will approach complaints of lending discrimination, and we are giving consideration to the desirability of rulemaking on that issue, balanced against the very real desire not to put more rules on the books if we don't have to. Frankly, my bias is against regulations, and you should not look for much activity in the area of rulemaking from me unless there is a general consensus from all affected parties that it is necessary and desirable to afford appropriate guidance on a particular issue.

On the program compliance side, I believe FHEO can play an important role in working cooperatively with recipients of funds it administers to address civil rights-related concerns, thereby averting necessity for an adversarial response in most instances. The Secretary has made very clear that he favors a collaborative, cooperative approach to dealing with issues that may arise in connection with our Administration of Federal funds, and, indeed, our own Title VI regulations mandate that we make every attempt to resolve problems informally, with enforcement action being a true last resort. Again, well trained, experienced staff can play an important role in assisting communities to meet their fair housing obligations under the various laws HUD administers, and we will increase the emphasis on providing this sort of support.

Finally, I want to speak briefly to why I am here and why this is so important to me. I am 47 years old. I grew up in a small town in East Texas in the 1950's and 1960's which was, and still is, about half black and half white. I know the face of prejudice, racism, and intolerance. I know how destructive it can be to individuals and communities. I believe that the Fair Housing Act, embodying as it does basic constitutional principals of fairness, dignity, and equality of opportunity, is one of the most important pieces of legislation ever to be passed by Congress. But I also believe we have, to date, failed in its promise. I am honored to have the opportunity to be at HUD under the leadership of Secretary Henry Cisneros, who I believe truly understands, believes in, and is committed to making good on that promise. And I am honored to have been asked to play an important role in that effort. I believe I have the common sense and good judgment to play that role out in a way that will earn your respect and trust, and if I am given the opportunity I will try to do just that. Thank you.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: JULIAN (LAST) ELIZABETH (FIRST) KATHERINE (OTHER)

Position to which nominated: Assistant Secretary for Fair Housing and Equal Opportunity Date of nomination: 8/10/95

Date of birth: 3/21/48 (DAY) (MONTH) (YEAR) Place of birth: Waco, Texas

Marital status: married Full name of spouse: Edward Bradbury Cloutman, III

Name and ages of children: Edward Bradbury Cloutman, IV 11 (DOB 12/18/83)

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>Crockett High School</u>	<u>1962-1966</u>	<u>High School Diploma</u>	<u>5/66</u>
	<u>Univ. of Texas at Austin</u>	<u>1966-70</u>	<u>B.A.</u>	<u>8/25/70</u>
	<u>Univ. of Texas Law School</u>	<u>1970-73</u>	<u>J.D.</u>	<u>5/26/73</u>

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
(see attached)		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

8/73-11/79 - Dallas Legal Services, Dallas, Texas
 I held several positions while at DLS:
 1973-77 Staff Attorney
 Fall 1977 - Interim Executive Director
 1978-79 - Deputy Director

11/80-12/81 - East Texas Legal Services
 Position: Attorney (part-time after 1/81)
 Location: I worked in the 36 county area served
 by ETLS stretching from the Red
 River (Texarkana) to the Golden
 Triangle (Beaumont/Port Arthur)

1/1/81-1/31/88 - Julian, Daniel, & Villarreal
 (subsequently Julian & Daniel)
 Dallas, Texas
 Partner in a small civil rights law firm

2/1/88-9/30/90 - Legal Services of North Texas
 Dallas, Texas
 Executive Director

10/1/90-12/31/93 - Law Office of Elizabeth F. Julian
 Dallas, Texas
 Sole practitioner

3-91-9/93 - Lawyers' Committee for Civil Right Under Law of Texas
 Dallas, Texas
 Acting Executive Director (pro bono volunteer work
 in setting up this non-profit organization)

Fall of 1991 and 1992 - Adjunct Professor, Southern Methodist Law
 School, Dallas Texas

1-10/94 present - Department of Housing & Urban Development
 Washington, D.C.

1/9-5/95 Deputy General Counsel for Civil Rights and
 Litigation

5/95-present Acting Deputy Assistant Secretary for
 Policy and Initiatives in the office of Fair Housing

Dallas Bar Association - on and off since 1973
 State Bar of Texas - 1973-present
 Individual Rights and Responsibilities Section of the
 State Bar - late 1970's -present
 Texas Bar Foundation - 1989-present
 Dallas Bar Foundation - 1994-present
 Dispute Mediation Service - Board of Directors, 1989-1993
 Dallas Legal Hospice - 1/90-1/94 Board member and Treasurer
 Lakewood Elementary PTA - member 1988-present; Board Member 1992-
 93 school year
 Grace United Methodist Church - 1992-present
 "Saving Grace" Capital Campaign, Advisory Board 1993
 W.M. "Mac" Taylor, Jr. American Inn of Court - 1989-1993
 National Organization of Women - Rainbow Chapter, Dallas 1990
 Dallas County Democratic Party - sustaining member off and on.
 Dallas County Democratic Forum - periodic membership 1985-1993
 East Dallas YMCA Board of Directors - 1982 (I think)
 NAACP on and off during the 1980's
 Poverty and Race Research Action Council - 1990-93, board
 member, executive committee member.
 Texas Gender Bias Task Force 1991-1994
 Lawyers Committee for Civil Rights of Texas - board member and
 Treasurer March 1991-Sept. 1993
 Northern District Civil Justice Reform Advisory Committee - 1991-
 Race and Poverty Institute (Advisory Board) - 1995 (resigned
 before I ever participated) 1993.

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Advisory Committee, Dallas Division, Civil Justice Reform Act of 1990 - a 26 person advisory committee for the Dallas Division appointed by Chief Judge Barefoot Sanders to make recommendations to the improve the handling of federal civil litigation in the Northern District of Texas, pursuant to the mandate of the Civil Justice Reform Act of 1990.

Texas Task Force on Gender Bias in the Courts - a 35 member task force appointed by the Supreme Court of Texas in 1991 to examine the issue of gender bias in the court system of Texas and make findings and recommendations.

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"Good Cause, Bad Cause, or No Cause at All: Does It Matter in Texas?", Texas Tech Law Review, Vol. XVII, No. (1986)

"Separate and Unequal: The Root and Branch of Public Housing Segregation", 23 CLEARINGHOUSE 666 (Oct. 1989) - Elizabeth Julian and Michael Daniel

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member, Democratic Party
Dallas County Democratic Party Sustaining Member
Dallas County Democratic Forum
Emily's List Majority Council

I have volunteered in partisan and non-partisan campaigns for particular candidates over the past 10 years (Phone bank, door to door get out the vote efforts, lent my name in endorsement, held an "introduce the candidate" in my home, etc. but I don't remember ever being in any "official" capacity.

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign or organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

We don't have records that far back. Attached
is everything I can find by going through our checks.

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
 (attach sheet)

attached

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Since I am already at HUD, I have done that. Of course, I will
do whatever else is necessary in this regard.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NO

3. Has anybody made you a commitment to a job after you leave government?

NO

4. Do you expect to serve the full term for which you have been appointed?

Yes

Political Contributions

(We don't have records back eight years. Here is everything I can find by going through our checks.)

EKJ

11/11/91	Diane Ragsdale, Dallas City Council	\$500
1/28/92	Kevin Wiggins Campaign	\$1000
3/25/92	Bill Clinton for President	\$500
7/29/92	Clinton General Election Compliance Fund	\$1000
8/19/92	DNC- Victory '92	\$1000
9/15/94	Dogget for Congress	\$500
5/23/95	Roberta Achtenberg for Mayor	\$500

EBC

6/4/91	Friends of Zan Holmes	\$1000
10/8/91	Friends of Marvin Crenshaw and Roy Williams	\$1000
11/11/91	Diane Ragsdale, Dallas City Council	\$500
5/19/92	John Bryant for Congress	\$500
7/27/92	Bill Clinton	\$1000
9/16/92	Kevin Wiggins for Judge Campaign	\$1000
12/1/92	John Bryant for Congress	\$500
2/18/93	Bob Kruger for Senate	\$1000
9/1/93	John Creuzot Campaign	\$500
12/1/93	Jim Mattox Campaign	\$1000
1/18/94	Cong. John Bryant	\$500
1/19/94	Diane Orozco Campaign	\$500
3/26/94	Jim Mattox	\$1000
5/2/94	Lloyd Dogget Congress Campaign	\$1000
6/17/94	Ann Richards for Governor	\$1000
9/15/94	John Bryant for Cong. Comp.	\$500
4/4/95	Ron Kirk for Mayor	\$500
4/19/95	Democratic Congressional Campaign	\$1000
7/20/95	John Bryant for Congress	\$1000

Qualifications:

I have practiced law for 22 years, specializing for much of that time in housing issues, particularly related to HUD housing and community development programs. While the focus of my representation of my clients was their legal rights, the broader policy issues inherent in the laws I sought to enforce were obvious. My practice in the areas of civil rights and fair housing has given me knowledge either directly or indirectly of most of the issues that confront an Assistant Secretary for Fair Housing. It has also given me perspective and a basis for judgment that is necessary to deal with the difficult and controversial issues that confront the Department on the fair housing front. I have spent my professional career dealing with conflicting interests and points of view in the adversarial context. I recognize the importance of finding common ground on the fundamental issue of "what is fair?" if real progress is to be made in dealing with the community-destroying effects of housing discrimination.

My experience since I have been at HUD has further prepared me to assume this position. As Deputy General Counsel for Civil Rights and Litigation I have worked with all the Program Offices and have had to seek to constructively resolve conflicts that naturally arise among groups of people pursuing different, but not necessarily incompatible, goals, consistent with the policies and priorities of the Secretary.

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated

I have an outstanding award of attorneys fees pursuant to 442 U.S.C. 1988 in a case against HUD, the City of Dallas, and the Dallas Housing Authority, which was for legal work done prior to my coming to HUD. An order was entered by the District Court in August of 1995, which the defendants are appealing. The Court's award to me is approximately \$167,000. I have recused myself from this case since I came to HUD.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

My husband is a labor and civil right lawyer. While he does not ordinarily handle cases which involve HUD or housing issues, and has no such cases now, the nature of his practice could result in his being employed by a person with an employment or civil rights matter involving HUD.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated

I have sued the Federal Government (HUD) on behalf of clients seeking redress for violations of their civil rights, as more fully set out in my resume. I have recused myself in all litigation involving my former clients.

- 4 List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

Prior to coming to HUD my activities seeking to influence legislation or policy have been in the adversarial context of representing clients in litigation involving housing or voting rights policy and practice.

- 5 Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I have recused myself or will recuse myself in all such matters. I have resigned or will resign from all outside organizations. In addition, because my husband is a lawyer, I have executed a recusal in any matter in which he may have a representational interest. However, he will not undertake representation involving HUD while I am here, as a practical matter.

Civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

none

- 2 Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

I believe that back in the mid-1970s a woman who operated a residential facility for severely mentally disabled children filed some sort of complaint with either the State Bar or Dallas Bar Association because I, along with several other lawyers, brought suit against her facility because of the conditions to which the children were being subjected. I don't recall the basis of the complaint other than she didn't think we should sue her. The complaint was dismissed and I don't have any recollection of any proceedings connected to it, nor do I have any records of it.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Chavers Kevin Gerald
(LAST) (FIRST) (OTHER)
 Position to which nominated: Government National Date of nomination: August 10, 1995
President, Mortgage Association
 Date of birth: 27 8 63 Place of birth: Philadelphia, Pennsylvania
(DAY) (MONTH) (YEAR)
 Marital status: Married Full name of spouse: Ginger Laurie McKnight
 Name and ages of children: none

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	Central H.S. Phila., PA	9/77 - 6/80	Diploma	6/80
	University of Virginia	8/80 - 5/84	B. A.	5/84
	Harvard Law School	8/84 - 6/87	J. D.	6/87

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Virginia Citizen's Planning Commission Award

Black Scholarship/Leadership Award

University of Virginia Law Room Recipient

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Kappa Alpha Psi Fraternity, Inc.		1982 to Present Life Member
American Bar Association District of Columbia Bar Association		1987 - 1989
Senate Black Legislative Staff Caucus		1989 - Present
Harvard Black Law Students Association		1989 - 1994
		1984 - 1987

Employment record List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment

Summer Associate - Foley & Lardner, Wash., D.C. - 5/85 to 9/85
Milbank, Tweed, Hadley & McCloy, N.Y., NY
Summer Associate - 5/86 to 9/86
Associate - Milbank, Tweed, Hadley & McCloy, N.Y., NY - 9/87 to 2/89
Associate - Shaw, Pittman, Potts & Trowbridge, Wash., D.C. - 2/89 to 9/89
Counsel - U.S. Senate Committee on Banking, Housing & Urban Affairs Wash., D.C. - 10/89 to 11/93
Chief of Staff - Office of Federal Housing Enterprise Oversight Wash., D.C. - 11/93 to 10/94 (Detailed to Government)
National Mortgage Association - 6/94 to 10/94
Executive Assistant to the President & Senior Vice President Government National Mortgage Association, Wash., D.C. - 10/94 to Present - 10/94 to Present

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Formerly served as Counsel U.S. Senate Committee on Banking,

Housing & Urban Affairs

Formerly served as Chief of Staff, Office of Federal Housing

Enterprise Oversight

Currently serve as Executive Assistant to the President & Senior

Vice President of the Government National Mortgage Association

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None, Though I served as Editor-in-Chief of the Harvard Blackletter

Journal Volume 4 Spring 1987

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years

Volunteer - Clinton - Gore '92

Political contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

None

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No, I am currently employed in Government Service

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

STATEMENT OF QUALIFICATIONS

For my entire professional career I have worked in the real estate finance arena in general and the housing and mortgage finance area, in particular. I was formerly an associate in the Real Estate Group of the Corporate Department of Milbank, Tweed, Hadley & McCloy in New York. During my tenure at Milbank I drafted and negotiated various mortgage loan and securities documents including various documents related to the issuance of private label mortgage-backed securities. Upon moving to Washington and practicing law at the law firm of Shaw, Pittman, Potts & Trowbridge, I continued to work on real estate matters, often serving as lender's counsel. During my time in private practice I gained valuable experience in the mechanics, documentation and legal issues related to mortgage finance transactions and the capital markets.

Upon my departure from private practice, I served as Counsel to The United States Senate Committee on Banking, Housing & Urban Affairs for approximately four years. While serving on the committee staff I acted as the Chairman's counsel on housing policy and housing finance related matters. As such, I focused on the oversight of The Government National Mortgage Association (Ginnie Mae), and the government sponsored enterprise secondary mortgage market entities, Fannie Mae and Freddie Mac. In addition, I was responsible for the drafting and negotiations of various provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Accordingly, my tenure on the Banking Committee staff significantly enhanced my understanding of the mortgage-backed securities industry in general, and of Ginnie Mae, Fannie Mae and Freddie Mac, in particular.

Serving as Chief-of-Staff of the Office of Federal Housing Enterprise Oversight further enhanced my knowledge of the operations of Fannie Mae and Freddie Mac. This position also afforded me an opportunity to gain valuable management experience while establishing a new organization.

Since June of 1994 I have served as Senior Vice-President & Executive Assistant to the President of Ginnie Mae. In this capacity I have managed the implementation of the Ginnie Mae President's policy priorities, including a business process reengineering and reorganization effort and the development and launching of a new multiclass structured securities program. Managing the business process reengineering effort has provided the opportunity for me to critically evaluate and effect improvements in all of the business practices of Ginnie Mae. Based on this evaluation I have also been tasked with implementing an organizational framework designed to enhance efficiencies and make Ginnie Mae a more customer service driven organization. This experience has certainly provided me with an in-depth understanding of the operations of Ginnie Mae. Moreover, serving as Senior Vice President has required that I undertake significant management responsibilities for the operations of the corporation. In addition, overseeing the launch of Ginnie Mae's new multiclass program has also deepened my knowledge of Ginnie Mae's role in the capital markets.

My professional experience in mortgage finance and housing policy in both the public and private sectors has provided a foundation of knowledge and skills which are the basis of my qualifications to serve as President of Ginnie Mae. Moreover, my current position at Ginnie Mae has uniquely prepared me to serve in the post for which I have been nominated.

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated

There are none .

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

There are none. Though I have agreed to recuse myself from

any matters which might affect the interest of my wife's

employer, Warner-Lambert Company

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated

There have been none .

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

There have been none.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not Applicable.

Civil, criminal and
investigative
actions

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

10/89 Speeding ticket fine, Middlesex County, VA

General District Court

2. Give the full details of any proceeding, inquiry, or investigation by any professional association, including any bar association, in which you were the subject of the proceeding, inquiry, or investigation.

There have been none.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Neely Joseph Harmon
(LAST) (FIRST) (OTHER)

Position to which nominated: Director - FDIC Date of nomination: 7-11-95

Date of birth: 9 1 51 Place of birth: Grenada, Mississippi
(DAY) (MONTH) (YEAR)

Marital status: Married Full name of spouse: Linda Johnson Neely

Name and ages of children: Joel - 19
Jessica - 15

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>Univ. of Southern Miss.</u>	<u>9/69 - 8/74</u>	<u>B.S.B.A.</u>	<u>8/74</u>
	<u>Univ. of Southern Miss.</u>	<u>9/74 - 8/75</u>	<u>M.B.A.</u>	<u>8/75</u>
	<u>Stonier Graduate School of Banking</u>	<u>6/85 - 6/87</u>	<u>Diploma of Graduation</u>	<u>6/87</u>

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Graduate Fellowship - University of Southern Mississippi

Recipient of Vicksburg's Outstanding Young Man Award - 1980

Selected as Leadership Mississippi Delegate

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

<u>Organization</u>	<u>Office held (if any)</u>	<u>Dates</u>
<u>Vicksburg Kiwanis Club</u>	<u>President</u>	<u>1984-1985</u>
<u>Warren County Heart Assoc.</u>	<u>President</u>	<u>various 1980's</u>
<u>Warren Co. Chamber of Commerce</u>	<u>Director</u>	<u>various 1980's</u>
<u>Warren Co. United Way</u>	<u>Division Chairman</u>	<u>various 1980's</u>
<u>Street Medical Foundation</u>	<u>Director</u>	<u>various 1980's - 1992</u>
<u>Conf. of State Bank Supervisors</u>	<u>Director</u>	<u>1994-1995</u>
<u> </u>	<u> </u>	<u> </u>

Employment record

List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

<u>Instructor - Hinds Jr. College; Raymond, Mississippi; 1975-1977</u>
<u>Assistant Vice President - Grenada Banking System; Grenada, Mississippi;</u>
<u>1977 - 1980</u>
<u>Senior Vice President - Merchants National Bank; Vicksburg, Mississippi;</u>
<u>1980 - 1992</u>
<u>Commissioner - Department of Banking and Consumer Finance; State of</u>
<u>Mississippi; 1992 - Present</u>
<u> </u>
<u> </u>
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**Government
experience:**

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Commissioner - Department of Banking - State of Mississippi

**Published
writings:**

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

N/A

**Political
affiliations
and activities:**

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years

None

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

Campaign of Kirk Fordice for Governor, 2/6/91, \$1,000

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

see attachment

Future employment
relationships

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

yes

Attachment to Statement for Completion by Presidential Nominees, page 4.

State fully your qualifications to serve in the position to which you have been named.

Community commercial banking has been my career since 1977 when I joined the Grenada Sunburst Banking System as a trainee. Since that time, I rose through the ranks of commercial banking to an executive officer of a national community bank. I have had direct experience in practically every phase of commercial banking at the grass roots level, community banking. I have spent my banking career on the front lines, dealing directly with customer needs and problems, directly managing bank operations and personnel, managing both a commercial and consumer loan portfolio, collecting problem loans, working to restore a problem bank to a sound condition, constantly seeking new and better ways to serve the financial needs of our marketplace, striving to earn a just return for the shareholders while insuring a safe and sound condition for the bank, and, all the while, being ever diligent and cognizant of a constantly changing and complex regulatory environment.

Since 1992, my focus and perspective of the banking industry shifted to the regulatory and supervisory arena with my appointment as Commissioner of Banking for the State of Mississippi. I trust that my commercial banking background has greatly benefited the industry and institutions that I supervise. I have called upon my direct experience many times when dealing with technical or problem issues facing our industry or one of the institutions under supervision. Many of our solutions have been the result of a practical, common sense approach to what appeared initially to be a complex regulatory problem.

In summary, I have served our industry from both sides of the desk, as banker and regulator. My experience is balanced between the national banking industry and the state-chartered banking industry. As Commissioner, I have supervised both the banking and thrift industry. As banker, I have negotiated for and subsequently purchased certain assets and deposit liabilities of a failed thrift institution. I have worked in a healthy bank and also in a problem bank. I have worked under formal regulatory agreements as a banker and have issued such agreements as a regulator. I have worked to restore a problem bank to profitability as a banker and have closed a problem bank as a regulator. I have worked under the supervision of the federal regulatory authorities as a banker and have worked in cooperation and coordination with the federal regulatory authorities as a regulator. My appointment to the Board of Directors of the Federal Deposit Insurance Corporation would bring a range of experience and practical approach to the current issues, problems, and opportunities which face the Board, the Corporation, and the industry. But, most importantly, my community banking perspective may best serve the depositors in whose interests the Corporation was created and is maintained.

**Potential conflicts
of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Only in regard to normal personal depository or borrowing

relationship with insured depository institution. FDIC

ethics agreement requires recusal in matters involving

institutions from which I have an extension of credit.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated

None

- 4 List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

Have visited with members of the Mississippi Congressional
Delegation concerning various current banking issues as part
of the group sponsored by Mississippi Bankers Association
annual "Washington Visit". Have also visited with the
Mississippi Congressional Delegation on current issues
as a member of the Conference of State Bank Supervisors
during their Legislative "Fly-ins".

- 5 Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Do not anticipate any potential conflict as my visits were
customary, routine, informal, and dealt with general, versus
specific, banking issues in my capacity as Commissioner of Banking.

Civil, criminal and
 investigatory
 actions:

- 1 Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation

None

- 2 Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding inquiry or investigation

None

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Johnson Norman Stanley
(LAST) (FIRST) (OTHER)

Position to which nominated: Member, Securities and Exchange Commission Date of nomination: 8/8/95

Date of birth: 28 September 1930 Place of birth: Boise, Idaho
(DAY) (MONTH) (YEAR)

Marital status: Married Full name of spouse: Carol Duane Groshell Johnson

Name and ages of children: Kelly Ann Johnson Anderson - age 36
Catherine-Michelle Johnson Clayton - age 31
Lisa Carol Johnson - age 25

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>San Jose State College</u>	<u>1949-1950</u>		
	<u>Brigham Young University</u>	<u>1955-1956</u>		
	<u>University of Utah Law School</u>	<u>1956-1959</u>	<u>Juris Doctor</u>	<u>1959</u>

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Adjunct Professor, Business and Securities Law, Westminster College,
Salt Lake City, Utah (1985)
Adjunct Professor, Securities Regulations, University of Utah,
Salt Lake City, Utah (1980-82)
Invited Presentations: Numerous lectures and panel presentations on
securities matters delivered over the past 20 years to professional
organizations.
Certificate of Appreciation - University of Utah, College of Law (1992)
Appreciation Award for Dedicated Service - National Conference of Bar
Presidents (1991)
Outstanding Utah Lawyer of the Year (1990)
Dedicated Service Award - Bill and Vieve Gore School of Business,
Advisory Council, Westminster College (1989)
Utah Judicial Conference Amicus Curiae Award (1988)

ATTACHMENT A to p. 1 "Honors and Awards" of
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Norman S. Johnson

New Mexico State Bar - Honorary Membership (1988)
Utah State Bar, Recognition for Dedicated Service (1985-1986)
Utah State Bar Commission - Outstanding Service Award (1980-86)
Utah State Bar, Securities Section - Recognition for Outstanding Service (1980)
Commendation for Outstanding Assistance to FBI (1977)
Fellows of the American Bar Foundation - Fellow (1987)

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations

Organization	Office held (if any)	Dates
<u>American Bar Association:</u>		
<u>House of Delegates</u>	<u>State Delegate</u>	<u>1990-present</u>
<u>Committee on Counsel Responsi-</u>		
<u>bility</u>	<u>Member</u>	<u>1989-present</u>
<u>Subcommittee on Public</u>		
<u>Offering Litigation</u>	<u>Member</u>	<u>1989-present</u>
<u>Nominating Committee for</u>		
<u>House of Delegates</u>	<u>Member</u>	<u>1991-present</u>
<u>Federal Regulation of</u>		
<u>Securities Committee</u>	<u>Member</u>	<u>1987-present</u>
<u>Fellows of American Bar</u>		
<u>Foundation</u>	<u>Member</u>	<u>1988-present</u>
<u>CONTINUED ON ATTACHMENT B</u>		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

<u>Law Clerk, Chief Justice, Utah Supreme Court,</u>		
<u>Salt Lake City, Utah</u>		<u>1959</u>
<u>Assistant Attorney General, Office of the Utah</u>		
<u>Attorney General, State of Utah,</u>		
<u>Salt Lake City, Utah</u>		<u>1959-1964</u>
<u>Trial Attorney, Trading and Markets, U.S.</u>		
<u>Securities and Exchange Commission,</u>		
<u>Salt Lake City, Utah and Los Angeles, California</u>		<u>1965-1967</u>
<u>General Securities Law Practice - primarily</u>		
<u>in the Intermountain Area</u>		<u>1967-1981</u>
<u>Shareholder and Senior Law Partner,</u>		
<u>Van Cott, Bagley, Cornwall & McCarthy,</u>		
<u>50 South Main Street, Suite 1600</u>		
<u>Salt Lake City, Utah 84145</u>		<u>1981-present</u>

ATTACHMENT B to p. 2 "Memberships" of
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Norman S. Johnson

Utah State Bar: Mandatory Continuing Legal Education Committee, Chairman,
1994-present
Governor's Advisory Board on Securities, Chairman, 1992-8/1995
Board of Bar Commissioners, Ex-Officio member, 1990-present

Utah Law and Justice Center, Board of Trustees, trustee, 1989-present
Governor's Advisory Committee to the Local Rules of Practice, member, 1989-present
Utah Families Foundation, director, 1993-present
Orrin G. Hatch Legal Expense Trust Fund, trustee, 1992-present

Over the last 25+ years I have also been on the following committees, of which I do not have information as to the exact date of the commencement of these committee assignments.

ABA, Securities Litigation Committee, Administrative Proceedings Subcommittee, member of the ABA Federal Regulation of Securities Committee, ABA Committee on Counsel Responsibility; past President of the Utah State Bar Association (1985-1986) and former Chairman of the Legislative Affairs Committee of the Utah State Bar Association; former President of the Corporate Banking and Business Law Section of the Utah State Bar Commission and former member of the Board of Bar Commissioners, Special Committee/ABA Model Rules and Ethics; past President of the Federal Bar Association, Utah Chapter; member of the National Conference of State Bar Presidents, Executive Council; Chairman of the Governor's Advisory Committee on Securities matters; former member of the Utah State Judicial Council and the Utah State Judicial Conduct Commission; former member of the Supreme Court Committee on Gender and Justice; former member of the Westminster College Board of Trustees, and member of Business Advisory Council; former Honorary member of the University of Utah, Law School Alumni Association Board of Trustees.

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Law Clerk, Chief Justice, Utah Supreme Court, Salt Lake City, Utah
U. S. Navy, enlisted (1/53 to 11/54)
Assistant Attorney General, Office of the Attorney General, State of
Utah, Salt Lake City, Utah (1959-1964)
Trial Attorney, Trading and Markets, U.S. Securities and Exchange
Commission, Salt Lake City, Utah and Los Angeles, California (1965-1967)
Governor's Advisory Board on Securities Matters, State of Utah
Governor's Task Force on Officer and Director Liability, State of Utah
Utah State Board of Bar Commissioners, Special Committee, ABA Model Rules
and Ethics
Supreme Court of Utah Committee on Gender and Justice
Utah State Judicial Council
Utah State Judicial Conduct Commission

Published
writings:

Advisory Committee to Local Rules of Practice, U.S. District Court of Utah
 List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"Securities Law and the Franchise Agreement", Corporate Practice
Commentator, 1981
"The Dynamics of SEC Rule 2(c): A Crisis for the Bar", Utah Law
Review 629, 1975
"The Expanding Responsibilities of Attorney's in Practice Before the
SEC: Disciplinary Proceedings Under Rule 2(e) of the Commissioner's
Rules of Practice," 25 Mercer Law Review 637, 1974
"The Registrar and Transfer Agent-Child of the Securities Industry;
Neglected or Indulged," 1971 Utah Law Review 308 and 1972
Securities Law Review 673.

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Republican Party

Orrin G. Hatch for Senate Election Committee

Governor Norman Bangertter (Utah), Special Committee of Lawyers
E.J. ("Jake") Garn for Senate Election Committee

Richard Snelgrove, Congressional Candidate

Governor Michael Leavitt (Utah)

Utah Elephant Club

Political contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

I have no recollection of any such contributions of \$500 or more.

Qualifications: State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

ATTACHMENT C

Future employment relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

ATTACHMENT D

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

ATTACHMENT C to p. 4 of
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Norman S. Johnson

"Qualifications":

I have over 25 years experience in many aspects of the securities industry. For the past 14 years I have been a member of Van Cott, Bagley, Cornwall & McCarthy in Salt Lake City, Utah, specializing in securities law. Previously, I had engaged in a general securities law practice of my own in the intermountain area. As a young lawyer I served as an SEC trial attorney in the Salt Lake City office. During my career I have handled many kinds of securities law issues. I have represented issuers, broker dealers, investment advisors and other professionals. I have handled various securities filings and have acted as legal counsel in NASD and SEC matters. While I have not done so for the past several years, in the past I have acted as counsel to the NASD. In my career as a securities lawyer I have developed substantial familiarity with the securities laws, with the SEC, with self-regulatory organizations, and with the concerns and needs of the industry and its participants.

In addition to my professional practice, I have also published, lectured, and taught on securities matters. I have served as a panelist on securities topics before professional organizations on numerous occasions during the past 20 years. I taught a course in securities regulation as an adjunct professor at the University of Utah between 1980 and 1982, and taught business and securities law as an adjunct professor at Westminster College in Salt Lake City in 1985.

My practical experience and professional expertise have resulted in my having been appointed to and holding a number of positions in the securities field. For example, I served as Chairman of the Governor's Advisory Committee on Securities matters for the state of Utah and was a member of a Task Force on Officer and Director Liability. I have long been active in the organized bar with a number of positions directly related to the securities field. I am a past president of the Utah State Bar Association and am a former Chairman of the Securities Advisory Committee (from which I resigned in August 1995), the Securities Subcommittee and the Legislative Affairs Committee of that Association. I also served as President of the Corporate Banking and Business Law Section of the Utah State Bar Commission. Nationally, I am a member of the American Bar Association Federal Regulation of Securities Committee, and of the subcommittee on Public Offering Litigation. I am a past Chairman of the Securities Litigation Committee, Administrative Proceedings Subcommittee. I am also a past president of the Federal Bar Association, Utah Chapter.

In addition to strictly securities related positions, I have also held a number of positions regarding professional and judicial responsibility, which I believe to be directly relevant to service as a Commissioner of the SEC. I am a member of the ABA Committee on Counsel Responsibility and am a former member of the Utah Bar Commission's Board of Bar Commissioners. I am a former member of the Utah State Judicial Council and the Utah State Judicial Conduct Commission, as well as the Executive Council of the National Conference of State Bar Presidents

Through the breadth of my experiences, I have gained a great respect for and interest in the securities field. I am committed to the protection of investors and the integrity of the securities market place. Having practiced for the government, and having represented clients both large and small, I understand the effect of securities regulation and enforcement on the various participants in the industry -- from the investor to the issuer to the broker to the marketmaker to the government itself. I know firsthand both the costs and benefits of government action in this field. I am committed to ensuring the continued protection of the American investing public without stifling the entrepreneurial spirit that has made America's market system the engine of our prosperity.

ATTACHMENT D to p. 4 of
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Norman S. Johnson

"Future employment Relationships"

Question 1:

I am presently a member of the firm Van Cott, Bagley, Cornwall & McCarthy in Salt Lake City, Utah. I certify that I will resign from this position prior to taking the oath as Commissioner. I will retain my vested interests in the firm's profit-sharing plan, but neither the firm nor myself will make any further contributions.

Pursuant to the firm's by-laws, upon resignation I will receive a payout of my equity interest in the firm in monthly installments over a five year period, plus a payment of five percent annual interest on the unpaid balance. In addition, pursuant to a deferred compensation agreement between the firm and myself, I will also receive an actuarially determined monthly deferred compensation payment for five years after my resignation. These amounts will be fixed upon my resignation and are not contingent on any future services that I will provide to the firm, nor are they tied to the future financial fortunes of the firm.

Upon my resignation, I shall also receive a lumpsum payment from the firm of fees for previously rendered services as originating partner on various matters. This sum represents overdue payments for past work, and no fee attributable to my services as originating partner exceeds \$5000 for any single client. The amount of this payment has yet to be determined and may be disputed.

I shall continue to retain my interest in the law firm's health plan at my own expense, pending an anticipated purchase of medical insurance at my expense through one of the plans available to government employees. I will also retain my life insurance through the firm, subject to converting from group to individual status.

Because of these continuing contacts with the firm, I will recuse myself from particular matters in which the firm is or represents a party so long as I am continuing to receive any payments from it.

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None, except as described in Attachment D to p. 4 "Future

Employment Relationships", 1.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

ATTACHMENT E

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

ATTACHMENT E to p. 5 of
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Norman S. Johnson

"Potential Conflicts of Interest":

2. Relationships:

Van Cott, Bagley, Cornwall & McCarthy
Standard Insurance Company
VanGuard
First Security Bank
West One Bank
Garbalizer Corporation of America
Floretta Ihk Trust
Wells Fargo
Orrin G. Hatch Legal Expense Trust Fund
Utah Families Foundation
Zions First National Bank
Huber, Erickson & Bowman
Key Bank
Bank One
ZCMI
Mervyns

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See Attachment F

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

ATTACHMENT F to p. 6 of
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Norman S. Johnson

"Potential Conflicts of Interest"

5. How potential conflicts will be resolved:

I have been furnished with a copy of 18 U.S.C. 208, as amended by the Ethics Reform Act of 1989, and the Canons of Ethics for Members of the Securities and Exchange Commission, 17 C.F.R. 200.50 et seq., both of which I have read. I understand that, as required by 18 U.S.C. 208, I must recuse myself from participating personally and substantially in any particular matter in which, to my knowledge, I or anyone whose interest is imputed to me would have a financial interest, unless a written waiver is issued pursuant to 18 U.S.C. 208(b).¹ Alternatively, I will consider divesting any financial interest that presents a conflict.

I intend to disqualify myself for the duration of the period during which I receive payments from Van Cott, Bagley, Cornwall & McCarthy from participation in any particular matter involving specific parties in which Van Cott, Bagley, Cornwall & McCarthy is or represents a party.

In addition, consistent with Subpart E of the OGE Standards, I intend to disqualify myself for a period of one year from participation in any particular matter involving specific parties involving an entity with which, during the past year, I served as officer, trustee, agent, attorney, or consultant, unless authorized to proceed pursuant to Subpart E of the Standards, 5 C.F.R. 2635.502(c).

I intend to participate in matters of general applicability, such as general policy considerations, rulemaking proceedings or legislation, except that, as required by 18 U.S.C. 208, I will not participate when such a matter would, to my knowledge, have direct and predictable effect on my financial interests, or financial interests imputed to me, unless a written waiver is issued pursuant to 18 U.S.C. 208(b).

Finally, I intend to disqualify myself on a case-by-case basis, with respect to any other matter where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest or any requirement to do so.

¹I understand that the financial interests that would be imputed to me are those of a spouse, dependent child, general partner, or any organization in which I am serving as officer, director, or trustee, or any person with whom I am negotiating for employment.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: HUNT ISAAC COSBY
(LAST) (FIRST) (MIDDLE)

Position to which nominated: Member, Securities & Exchange Commission Date of nomination: August 8, 1995

Date of birth: 1 August 1937 Place of birth: Danville, VA
(DAY) (MONTH) (YEAR)

Marital status: Widowed Full name of spouse: _____

Name and ages of children: Isaac C. Hunt, 11 1/2 - 23

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>Fisk University</u>	<u>1952-1957</u>	<u>B.A.</u>	<u>1957</u>
	<u>Columbia University</u>	<u>1952-1957</u>		
	<u>University of Virginia</u>	<u>1959-1962</u>	<u>LL.B.</u>	<u>1962</u>
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Ford Foundation Scholarship, Fisk University, 1952-53 and 1953-54

Who's Who in American Colleges and Universities, 1957

Department of the Army Outstanding Civilian Service Medal, 1981

Harold K. Stubbs Humanitarian Award, 1993

United Way of Summit County Certificate of Appreciation, 1993

Ohio House of Representatives Commendation, 1995

Governor George Voinovich (Ohio) Commendation 1995

City of Akron Proclamation of "Dr. Isaac Hunt, Jr. Day" 1995

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations

Organization	Office held (if any)	Dates
(See attachment, pages 2a and 2b)		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

Staff Attorney U.S. Securities and Exchange Commission Wash DC 1962-67

Field Team Leader, National Advisory Commission on Civil Disorders
Wash. DC 1967-68

Special Assistant to Commissioner Elizabeth J. Kuck, U.S. Equal
Employment Opportunity Commission, Wash DC May-September 1968

Staff Member, The New York City-RAND Institute, New York NY 1968-71

University Lecturer, Graduate School of Social Work and Social Research
Byrn Mawr College, Byrn Mawr PA 1970-77

Assistant Professor of Law, Columbus School of Law, The Catholic
University of America, Wash. DC 1971-77

Associate Attorney, Law firm of Jones, Day, Reavis & Pogue,
Wash. DC 1977-79

Principal Deputy General Counsel, Department of the Army, Wash. DC
1979-81

Associate Dean for Academic Affairs, The Antioch School of Law,
Wash, DC August-December 1982

(continued on 2c)

Civic and Professional Activities

- * Charter Benchler, Charles F. Scanlon American Inn of Court, 1988-Present.
- * Charter Member, Supreme Court of Ohio Committee on Dispute Resolution (Representing Ohio Legal Education), 1989-1994.
- * Charter Member, Supreme Court of Ohio Commission on Racial Fairness, 1993-present.
- * Charter Member, Commission on Judicial Candidates of the Akron Bar Association, February 1992-present.
- * Charter Member, Advisory Committee for the American Inns of Court Law School Project, October, 1994-present.
- * Charter Member, Law Access, Inc. Board of Directors, 1993-present.

Charter Member, Law School Administration Committee of the Section of Legal Education and Admissions to the Bar, American Bar Association, 1994-95.

- * Charter Member, County of Summit (Ohio) Social Services Advisory Board, 1989-present. Chair, Levy Structure Review Committee, 1990-present.

Member, Committee on Clinical Legal Education of the Association of American Law Schools, 1994-96.

Member, American Bar Association/Association of American Law Schools ("ABA/AALS") Joint Site Evaluation Teams for the University of Georgia School of Law (March 1992); the University of San Diego School of Law (February 1991); and Howard University School of Law (October 1993).

Member, Special AALS Site Evaluation Team for the Baylor University School of Law, March 1993.

Member, Law Libraries Committee of the Section of Legal Education and Admissions to the Bar, American Bar Association, July 1993-present.

Member, External Evaluation Team for the Wayne State University Law School, February-March 1991.

Member, Legal Needs Assessment Advisory Committee, Ohio State Bar Assoc., 1989-90.

- * Member, Rotary Club of Akron, Membership Committee and Program Committee, July 1991-present; Member, Strategic Planning Committee, February 1993-present.
- * Member, Board of Trustees of United Way of Summit County: Long-Range Planning Committee; Planning and Allocations Committee; July 1991-present; Vice Chair, June 1993-present; University of Akron Torch Club Campaign Coordinator, 1993.

Member, Committee on Libraries of the Association of American Law Schools, 1988-91.

- * Will resign upon confirmation

Civic and Professional Activities (continued)

Member, Law School Admissions Council Financial Aid Services Committee, 1991-92.

Member, Board of Directors, Sasha Bruce Youthwork, Inc., 1984-90;
Chair, February 1987-December 1988.

Member, New York Stock Exchange Washington Metropolitan Area Arbitration Panel,
1983-1987.

Member, Board of Editors, The Washington Lawyer (official publication of the District of
Columbia Bar), January 1986-December 1987.

Member, Committee on Legal Specialization of Division IV of the District of Columbia
Bar,
1980-1981.

Member, Committee on Continuing Legal Education of the District of Columbia Bar,
1980-1981.

Co-Chairperson, District of Columbia Consumer Goods Repair Board, 1974 - 1976.

Member, Board of Governors, Society of American Law Teachers, 1976 - 1979.

Dean, The Antioch School of Law, Wash. DC 1983-87

Dean, The University of Akron School of Law, Akron, OH 1987-1995

Professor, The University of Akron School of Law, Akron, OH

1995-present

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Staff Attorney, U.S. Securities and Exchange Commission 1962-67

Field Team Leader, National Advisory Commission on Civil Disorders

1967-68

Special Assistant to Commissioner Elizabeth J. Kuck, U.S. Equal

Employment Opportunity Commission, 1967

Principal Deputy General Counsel, Department of the Army 1979-81

(continued on page 3a)

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Introduction to "Developing U.S.-Russian Relations: Academically,

Legally and Economically, 26 Akron L. Rev. 439 (1993)

Minority Recruiting in the New York City Police Department (with

B. Cohen) R-702 NYC, The RAND Corporation (1971)

"The Aftermath of Disorder," Chapter II, Part V, of the Report of the

National Advisory Commission on Civil Disorders Government Printing

Office (1968)

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years

Not applicable

Acting General Counsel, Department of the Army, January-July 1981

* Charter Member, Supreme Court of Ohio Committee on Dispute

Resolution 1989-94

* Charter Member, Supreme Court of Ohio Commission on Racial Fairness

1993-present

Charter Member, County of Summit (Ohio) Social Services Advisory

Board 1989-present

Charter Co-Chairperson, District of Columbia Consumer Goods

Repair Board 1974-76

Staff member, The New York City RAND Institute, 1968-71

* Will resign upon confirmation

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

None

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

(See attachment 4a)

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes (See attachment A)

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

As a staff attorney with the Division of Corporate Regulation ("Division") of the Securities and Exchange Commission ("Commission") for the period of 1962-67, I examined and analyzed registration statements, proxy statements, periodic reports, and sales literature filed by registered investment companies pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940. I also participated in pre- and postfiling conferences with representatives of or counsel for registrants and drafted memoranda to be submitted to the Director of the Division or to the Commission on matters of a novel or precedent setting nature or requiring policy decisions for other reasons.

In addition, at the Columbus School of Law of The Catholic University of America, at the Antioch School of Law, and at The University of Akron School of Law, I have taught the basic course in Securities Regulation for more than a decade. My course offerings in this area have been concentrated on the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, with little concentration on the other statutes administered by the Commission.

As a teacher of the law of Securities Regulation, I have attempted to maintain my currency in this area of the law so as to apprise my students of current developments.

Finally, for the years 1983-87 I was a member of the Washington Metropolitan Area Arbitration Panel of the New York Stock Exchange. In this capacity, I participated in, or chaired, many arbitrations involving disputes between individual investors and the broker-dealer firms which managed those investors' stock, bond, and mutual fund investments.

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

(see attachment B)

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

(See attachment C)

Civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

ATTACHMENT A - Page 4

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES (ISAAC HUNT)
RESPONSE TO QUESTION REGARDING FUTURE EMPLOYMENT RELATIONSHIPS

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I am presently employed as a Professor in the School of Law of the University of Akron, in Akron, Ohio. From July, 1987 through June 30, 1995, I was the Dean of the School of Law of the University of Akron. I have retired from that position. I certify that immediately upon taking the oath of office as Commissioner, I will resign from the position of Professor of Law.

I have vested retirement benefits from the University of Akron in the State Teachers Retirement System of Ohio, which is an excepted investment fund.^{1/} It is fully funded and managed in-house. The underlying investments are not disclosed to fund participants. The University of Akron will cease making contributions on my behalf upon my retirement. I will receive no other continuing employment benefits, health or otherwise, nor any severance package, upon my retirement from the University of Akron.

ATTACHMENT B - Page 5

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES (ISAAC HUNT)
RESPONSE TO QUESTION 2.

First National Bank of Ohio
University of Akron
Co-operative Savings Bank
Charter Federal Savings Bank
First State Bank
Imperial Savings & Loan Association
Teachers Insurance and Annuity Association
College Retirement Equities Fund
State Teachers Retirement System of Ohio
Mellon Mortgage Company
Goodwill Industries of Akron, Inc.
The Access Group, Inc.

^{1/} I also continue to hold vested retirement benefits in the Teachers Insurance and Annuity Association College Retirement Equities Fund, which is an excepted investment fund, arising from former positions with Antioch University and Catholic University of America. No contributions are being made on my behalf into this fund by any past or present employer.

ATTACHMENT C - Page 6

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES (ISAAC HUNT)
 RESPONSE TO QUESTION 5. REGARDING POTENTIAL CONFLICTS OF INTEREST

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I have been furnished with a copy of 18 U.S.C. 208, as amended by the Ethics Reform Act of 1989, and the Canons of Ethics for Members of the Securities and Exchange Commission, 17 C.F.R. 200.50 et seq., both of which I have read. I understand that, as required by 18 U.S.C. 208, I must disqualify myself from any particular matter that, to my knowledge, would have a direct and predictable effect on my financial interests or a financial interest imputed to me, 1/ unless a written waiver of such disqualification is issued pursuant to 18 U.S.C. 208(b).

Accordingly, I intend to disqualify myself from participation in any particular matter involving specific parties that has a direct and predictable effect on my financial interests or a financial interest imputed to me.

In addition, I intend to participate in matters of general applicability, such as general policy considerations, rulemaking proceedings or legislation, except that, as required by 18 U.S.C. 208, I will not participate when such a matter would, to my knowledge, have a direct and predictable effect on my financial interests, or financial interests imputed to me.

Finally, I intend to disqualify myself on a case-by-case basis, with respect to any other matter where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest or any requirement to do so.

I understand that the financial interests that would be disclosed here are those of a spouse, dependent child, adult partner, or any organization in which I am an officer, director, or trustee, or any person with whom I am negotiating for employment.

**PREPARED STATEMENT OF DR. ALICIA HAYDOCK MUNNELL
NOMINEE TO BE A MEMBER OF THE COUNCIL OF
ECONOMIC ADVISERS**

Mr. Chairman and distinguished Members of the Committee, I am pleased and honored to appear before you today as the President's nominee to be a Member of the Council of Economic Advisers.

Having served for nearly 3 years in Government, I have witnessed the CEA's contribution firsthand. The Council plays a unique role; it is not embedded in any agency and therefore not constrained by the need to defend particular programs. The staff of the Council is also special. It consists of top flight economists who come to Government for a year or two, loaded with energy, new analytical techniques, and fresh ideas. In my role as the Treasury Department's Assistant Secretary for Economic Policy, I sat at many tables where I was delighted to have the CEA as an ally.

When the CEA's funding was threatened, former Council members and supporters from both parties came forward to argue that the Council provides good value per dollar of expenditure. They related how in Administration after Administration the Council has brought a market perspective to policy debates, and has consistently advocated policies that foster incentives, efficiency, and productivity. Many Members of the Banking Committee understood the Council's role and did much to help during CEA's funding debate.

If confirmed, I would share responsibility at the Council for the macroeconomic issues—the Administration's forecast, tax and budget policy. I would also cover health, labor, and environmental issues. Most of my professional career has been devoted to these broad topics. I spent 20 years at the Federal Reserve Bank of Boston, the last 10 years as Senior Vice President and Director of Research.

This is both an exciting and challenging time to be involved in economic policy. When the Clinton Administration came to office, it faced two types of problems—a short-term cyclical problem and longer term structural problems. In the short run, our first priority was to get the economy moving and get people back to work. To a large extent, this has been done. The economy has created millions of new jobs and continues to expand in an environment of very low inflation.

The longer-term challenges remain, however. Productivity growth remains low, which means that wage growth is very slow. Moreover, the distribution of those wage gains have been very uneven—the bottom two quintiles have actually seen declines in their real wages over the last 15 years. Figuring out how to improve overall economic growth and to make sure that everyone in our society has the ability to participate in this new high-tech world is the major challenge as we enter the 21st century. The Council is uniquely suited to contribute to this effort.

Although I relish the opportunity to serve, if confirmed, as a Member of the Council, I will very much miss the Treasury Department. For nearly 3 years, I served as Assistant Secretary of the Treasury for Economic Policy, first under Secretary Bentsen and then under Secretary Rubin. In that capacity, I was fortunate to work with a staff of talented professionals who contributed to nearly every aspect of Administration policy. Everything that you have heard about the quality of Treasury's career staff is true; they are wonderful.

In concluding Mr. Chairman, I would like to thank the Members of the Committee with whom I have met over the past few weeks. Candid discussion of the issues is the only way that the Administration and Congress can have a productive dialogue. I appreciate your time and openness.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Munnell (LAST) Alicia (FIRST) Haydock (OTHER)Position to which nominated: Member, Council of Economic Advisers Date of nomination: June 28, 1995Date of birth: 6/12/42 (DAY) (MONTH) (YEAR) Place of birth: New York, New YorkMarital status: M Full name of spouse: Henry S. HealyName and ages of children: T. Clark Munnell Age 28
Hamilton H. Munnell Age 27

Education:	Institution	Dates attended	Degrees received	Dates of degrees
High School	<u>The Spence School</u>	<u>1948-1960</u>		
College	<u>Wellesley College</u>	<u>1960-1964</u>	<u>B.A. Economics</u>	<u>1964</u>
	<u>Boston University</u>	<u>1965-1966</u>	<u>M.A. Economics</u>	<u>1966</u>
	<u>Harvard University</u>	<u>1969-1973</u>	<u>M.A., Ph.D. Economics</u>	<u>1973</u>

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Wellesley College Alumnae Achievement Award, Wellesley College, 1989Academy of Distinguished Alumni, Boston University, 1985Alumna Member of Phi Beta Kappa, Wellesley College, 1985

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
<u>Institute of Medicine, National Academy of Sciences</u>	<u>Member</u>	<u>1987-Present</u>
<u>National Academy of Public Administration</u>	<u>Member</u>	<u>1985-Present</u>
<u>Pension Research Council of Wharton School of Finance & Commerce</u>	<u>Member</u>	<u>1979-Present</u>
<u>American Economic Association</u>	<u>Member</u>	<u>1973-Present</u>
<u>International Institute of Public Finance</u>	<u>Member</u>	<u>1986-Present</u>
<u>National Academy of Social Insurance</u>	<u>Member</u>	<u>1986-Present</u>
<u>Boston Economic Club</u>	<u>Member</u>	<u>1981-Present</u>

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

Assistant Secretary (Economic Policy), U.S. Treasury Dept., 1983-Present
Senior Vice President & Director of Research, Federal Reserve Bank
of Boston, 1984-1993
Vice President & Economist, Federal Reserve Bank of Boston, 1979-1984
Asst. Vice President & Economist, Federal Reserve Bank of Boston, 1976-1979
Economist, Federal Reserve Bank of Boston, 1973-1976
Assistant Professor of Economics, Wellesley College, 1974
Teaching Fellow, Economics Dept., Harvard University, 1971-1973
Research Assistant, The Brookings Institution, 1966-1968
Teaching Fellow, Economics Dept., Boston University, 1965-1966
Staff Assistant, Business Research Div. New England Telephone Co. 1964-1965

**Government
experience:**

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

U.S. Army Corps of Engineers Workshop to Consider Issues of Federal Infrastructure Investments, Economic Growth & Productivity, 1992-Present
Subcommittee on Retirement Income and Employment of the Select Committee on Aging, U.S. House of Representatives, Congressional Study Group on Women and Retirement, 1997

Commission to Review Massachusetts Annuity Takeover Laws, 1986-1989

Advisory Group to the National Commission for Employment Policy, 1980-1990

Advisory Committee for Urban Institute HUD Grant on State-Local Pensions, 1978-1981 (See attached continuation sheet)

Continuation of government experience:

Massachusetts Retirement Law Commission, 1976-1982

Special Funding Advisory Committee for Massachusetts Pensions, 1976

Governor's Task Force on Unemployment Compensation, Massachusetts, 1975

**Published
writings:**

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See attached resume

**Political
affiliations
and activities:**

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years

None - Registered Democrat

Political contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

	<u>Michael Dukakis</u>	<u>January 1988</u>	<u>\$500</u>
	<u>Jim Guest for Congress</u>	<u>May 1988</u>	<u>\$500</u>
(<u>John Kerry</u>	<u>Nov 1989</u>	<u>\$200</u>
(<u>John Kerry for Senate</u>	<u>Feb 1990</u>	<u>\$250</u>
(<u>John Kerry for Senate</u>	<u>Apr 1990</u>	<u>\$100</u>
	<u>John Kerry for Senate</u>	<u>Sep 1990</u>	<u>\$600</u>
	<u>John Kerry for Senate</u>	<u>Oct 1990</u>	<u>\$400</u>

Qualifications: State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

See attached resume.

Future employment relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

Civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

ALICIA HAYDOCK MUNNELL
 3424 Prospect Street, N.W.
 Washington, D.C. 20007
 (202) 965-3719

Department of the Treasury
 1500 Pennsylvania Avenue, N.W.
 Washington, D.C. 20220
 (202) 622-2200

WORK EXPERIENCE

1993-present U.S. Treasury Department
 Assistant Secretary for Economic Policy

1973-1993 Federal Reserve Bank of Boston
 1984-1993 Senior Vice President and Director of Research
 1979-1984 Vice President and Economist
 1976-1978 Assistant Vice President and Economist
 1973-1976 Economist

1974 Wellesley College, Assistant Professor of Economics

1971-1973 Harvard University, Teaching Fellow in Economics Department

1966-1968 The Brookings Institution, Economic Studies Program,
 Research Assistant for Joseph A. Pechman, Director

1965-1966 Boston University, Economics Department, Teaching Fellow

1964-1965 New England Telephone Company, Business Research Division,
 Staff Assistant

EDUCATION

1973 Harvard University, Ph.D. in Economics

1966 Boston University, M.A. in Economics

1964 Wellesley College, B.A. with major in Economics

PROFESSIONAL ACTIVITIES

1992-present U.S. Army Corps of Engineers Workshop to Consider Issues of
 Federal Infrastructure Investments, Economic Growth and
 Productivity, Participant

1992-present The World Bank, Advisory Committee to the Study on Old Age
 Security Arrangements, Member

1989-present Massachusetts Institute of Technology, Economics Visiting
 Committee, Member

PROFESSIONAL ACTIVITIES (cont'd)

1987-present Institute of Medicine, National Academy of Sciences, Committee on Health and Human Rights, Member

1986-present Institute of Medicine, National Academy of Sciences, Member

1986-present International Institute of Public Finance, Member

1986-present National Academy of Social Insurance, Co-founder and President (1986-1990), Member

1985-present National Academy of Public Administration, Member

1981-present Boston Economic Club, Secretary-Treasurer (1986-1987), Vice President (1987-1988), President (1988-1989), Member

1979-present Pension Research Council, Wharton School of Finance and Commerce, University of Pennsylvania, Member

1992 International Monetary Fund, Technical Assistance Program, Consultant to Armenia

1992 Subcommittee on Retirement Income and Employment of the Select Committee on Aging, U.S. House of Representatives, Congressional Study Group on Women and Retirement, Participant

1991 American Economic Association, Nominating Committee, Member

1990 Advisory Council on Social Security, Technical Panel of Experts, Member

1988-1993 The American Prospect, Editorial Board, Member

1988-1989 Commission to Review Massachusetts Anti-Takeover Laws, Member

1988-1989 Program Committee for the December 1989 American Economic Association Meeting, Member

1987-1993 American Enterprise Institute, Advisory Council for "Economics and Politics of Fiscal Policy," Member

1987-1989 American Association of Retired Persons, National Steering Committee for "New Roles in Society," Member

1986-1987 Harvard University, Advisory Committee to the Consortium on Long-Term Care, Member

PROFESSIONAL ACTIVITIES (cont'd)

1985-1988	Ford Foundation, Research Advisory Committee for the Project on Social Welfare Policy and the American Future, Member
1984-1993	Pension Rights Center, Member of Board of Directors
1984-1987	Institute of Medicine, National Academy of Sciences, Committee to Plan a Major Study of National Long-Term Care Policies, Member
1984-1987	Medicare Working Group, Division of Health Policy Research and Education, Harvard University, Member
1984-1986	Carnegie Commission on College Retirement, Member
1984	Supervisory Panel, The Forum Institute of the Villers Foundation, Member
1984	The Government Research Corporation, Private Sector Retirement Security and U.S. Tax Policy Roundtable Discussions, Participant
1980-1984	Advisory Board for the National Aging Policy Center on Income Maintenance, Brandeis University, Member
1980-1982	Advisory Group to the National Commission for Employment Policy, Member
1978-1981	Advisory Committee for Urban Institute HUD Grant on State-Local Pensions, Member
1978	National Planning Association, Joint Committee on Public Pensions, Staff Director
1976-1982	Massachusetts Retirement Law Commission, Member
1976	Special Funding Advisory Committee for Massachusetts Pensions
1975	Governor's Task Force on Unemployment Compensation, Massachusetts, Member

HONORS AND AWARDS

Wellesley College Alumnae Achievement Award, Wellesley College, 1989
 Academy of Distinguished Alumni, Boston University, 1985
 Alumna Member of Phi Beta Kappa, Wellesley College, 1985

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**RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO
FROM DWIGHT P. ROBINSON**

Q.1. Mr. Robinson, can you give specific examples of how your experience at GNMA prepared you for the position of HUD Deputy Secretary?

A.1. While my Ginnie Mae experience has been very important, it is only a part of my experience which has prepared me for this responsibility. Over my entire career, I've been involved in housing and community development work. Specifically, my experience with the Michigan State Housing Finance Agency gave me the program oversight and administrative skills useful to this responsibility. In addition, my role with the Federal Home Loan Mortgage Corporation (Freddie Mac) sharpened my managerial skills and expanded my policymaking skills as I engaged in new product development activity in a large organization.

At Ginnie Mae, one of my major accomplishments was implementing a Business Process Redesign (BPR) which focused on improving management weaknesses, business risk assessment and customer service. The BPR has resulted in more than 40 business process changes, a complete reorganization of the agency, and an integration of information systems.

The above experiences, combined with over 10 months as Acting Deputy Secretary, have given me fundamental insights on the operations of the Department and solid credentials for this position.

Q.2. I applaud your ambition to "transform not only the programs and policies of the Department, but also what may be more important, improving the operation and management of the Department." How do you plan to achieve this goal with less money and less personnel?

A.2. I believe that significant progress has been made in the introduction and consistent application of disciplined management tools. In the past 30 months, HUD has undertaken a decisive and organized process of evaluating and correcting systemic problems that have hampered the ability of the Department to be responsive to customer needs. This process includes development of a Strategic Performance System, improvements in business processes, and development of workforce training and human resources management tools.

We have made substantial progress in developing a Strategic Performance System (SPS) which supports HUD's changing role and mission. Comprehensive management planning is key to the SPS and requires the development of management plans, the incorporation of management controls, the oversight of the Management Committee, and performance reporting and accountability. The Management Committee, during the past year, has made decisions based on a set of cross-functional priorities. For example, a departmental grants management system was approved and development of that system is underway.

Significant progress has been made in improving HUD's management systems, which has resulted in demonstrated improvements in performance. For example, in FHA, revised practices resulted in a clean audit opinion, for the first time, by the IG based on the opinion of Price Waterhouse. The Office of Housing has developed

a Single Family Processing Center in Denver, which takes advantage of economies of scale by performing mortgage insurance endorsement processing of single-family loans for up to 17 field offices. The Office of Administration completed a BPR and has established three administrative service centers which provide the full range of services for the whole Department. Also, a Department-wide Business Process Redesign (BPR) program has been implemented, to improve the processes and techniques used in doing HUD's business.

Human resource management tools have been developed to provide staffing resources to priority areas, while meeting or exceeding overall Departmental staffing goals.

The Office of Departmental Equal Employment Opportunity has been reorganized and has established new requirements for the Department.

Over the next 15 months, my priority is to continue to refine several initiatives that are underway. The field reorganization will proceed to establish HUD field offices as enabling agents for our customers. We are in the process of developing a place-based approach to service delivery, which will allow streamlined programs to be effectively administered to reflect local needs and priorities. A Model Office(s) is under development, to serve as a demonstration for subsequent implementation across the country.

Strategic performance planning, which links key policy making, budget, and management processes, will continue to advance the many initiatives that have already been undertaken as part of a coherent unified approach to achieving the Department's mission. The strategic performance planning process will enable HUD to better manage its resources and processes, and to achieve a greater level of service to its constituencies.

The Management Committee, which I chair, meets bi-weekly and serves as a forum for integrated, top-management attention to cross-cutting operational items. Standing agenda items now include operational management, completion of the Field reorganization, performance management, technical investments, and management of HUD staff resources.

Efforts underway at the Department during Secretary Cisneros' administration, which have intensified over the past 12 months, represent a dramatic cultural change for the Department. Not only in terms of program changes and consolidation, BPR's, and technical improvements, but also in terms of the behavior and accountability of HUD and its staff. This is a fundamental-cultural change, led by the reinvention ideas, as to the basic roles and responsibilities of Government. This is a change which is of particular consequence to HUD.

Several results will demonstrate progression the issues outlined earlier:

- We will be able to measure outcomes and improvements based on clearly defined goals and objectives.
- We will have solidified decisionmaking processes so that they are more cooperative and cross-cutting.
- We will begin to have demonstrated value-added relations with customers.

- We will have established a new structure that facilitates cross-cutting operations and creates efficiencies.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM DWIGHT P. ROBINSON

Q.1. What do you consider your most important accomplishments during your tenure as President of Ginnie Mae?

A.1. In response to President Clinton's National Performance Review of the Federal Government and Secretary Cisneros' Reinvention Blueprint for a new HUD, I launched a Business Process Redesign (BPR) initiative in January 1994. The BPR initiative paralleled the long-range objective of the President and the Secretary which was to develop a strategy that would make Government operate work better and cost less by emphasizing service and quality for the American people.

The BPR's initial objectives were: (1) to perform a value/risk analysis of Ginnie Mae's business processes; (2) to redesign processes to improve effectiveness and efficiency; (3) reorganize Ginnie Mae's structure to carry out the redesigned processes; and (4) to redevelop and integrate Ginnie Mae systems.

A mission statement was developed identifying critical success factors and performance measures for Ginnie Mae. From these efforts approximately 40 Opportunities for Improvement were identified which served to streamline Ginnie Mae's business processes and in some cases mitigate Ginnie Mae's risk exposure.

The staff structure was reorganized in response to customer service needs by flattening the organization and empowering the employee.

Approximately 60 percent of the Opportunities for Improvement have been completed, including:

- The adoption of Master Agreements, which reduced the number of pool submission forms from eight to three and requires only one signature, saving over 180,000 sheets of paper and approximately 400,000 signatures.
- The creation of a new Ginnie Mae adjustable rate mortgage pool type expands Ginnie Mae's product line.
- The reduction in the pool processing time for multiple issuer pools from 8 business days to 5 business days provides issuers with more time to prepare loans for securitization.
- The establishment of a New Pool Issuance Help Desk provides assistance to issuers that have pool documentation errors and eliminates costly pool rejections.
- The daily availability of Ginnie Mae weighted averaged data.
- The launching of an Immediate Pool Issuance and Transfer Pilot Program eliminates the complexity of pool transfers.

The BPR helped demonstrate Ginnie Mae's commitment to excellence through customer service. The benefits of improving the secondary market through customer service reduce the time to securitize whole loans in the secondary market and this creates a savings that may be passed through to the American home buyer.

My other major accomplishment was the development and implementation of the Ginnie Mae Multiclass Securities Program. Despite the worst market conditions possible, we were able to launch

this program, which not only provides Ginnie Mae with a full complement of secondary market tools, but also, I'm proud to say, demonstrates that Government can participate effectively in highly technical and technology-laden business, for the benefit of the American people.

In May 1994, Ginnie Mae commenced operation of its Multiclass Securities Program by introducing its capacity to repackage principal and interest cash flow from its Ginnie Mae Mortgage-Backed Securities (MBS) Program into Real Estate Mortgage Investment Conduit (REMIC) security classes or tranches created to respond to specific investor needs. The quick success of the initial stage of the program led to the full participation stage in September 1994. Since the program's inception, 15 REMIC deals have been closed totalling over \$4.6 billion in new REMIC securities.

In November of 1994, Ginnie Mae commenced its operation of its Platinum Securities Program which allows the combination of smaller less liquid pools of MBS into larger Platinum Certificates. Thus far 232 pools have been issued totalling over \$19.3 billion in Platinum Certificates.

The Ginnie Mae Multiclass Securities Program will tend to further lower the yields on Ginnie Mae MBS which should be accompanied by a corresponding increase in price as the securities are sold into the Capital Markets. In addition, the efficiencies associated with the introduction of the Ginnie Mae Multiclass Securities Program immediately generated a restructuring of several private entities' REMIC programs which in effect transferred significant economic benefits associated with the usage and time value of money from the shareholders to American home buyers.

Q.2. For approximately the last year, you have had the dual role of Ginnie Mae President and Acting Deputy Secretary. What has been your greatest accomplishments in your role as Acting Deputy?

A.2. During the past year, I have focused my efforts on strengthening and enhancing management initiatives begun by my predecessor, Terry Duvernay. My primary goal for the Department has been and remains to strengthen internal processes, operate cross-functionally, improve systems, ensure that the Department focuses on key priorities, and direct resources accordingly. In addition, working through the Presidential Management Committee, I want to ensure that HUD's reinvention benefits from the experience of other Federal agencies in their similar efforts. Specifically, I have implemented the following improvements:

- Refocused the Management Committee as a forum for integrated, top-management attention to cross-cutting operational items. Standing agenda items now include operational management, completion of the Field reorganization, and management of HUD staff resources.
- Established tools for stewardship of HUD's limited resources consistent with Departmental objectives, including an employment freeze and a Departmental committee to ensure integrated consideration of HUD-wide needs for severely limited resources.
- Focused the coordination and development of the Secretary's Performance Report.

- Ensured that the FY 1995 Strategic Plan was modified to keep pace with HUD reinvention, and that the FY 1996 Plan can accommodate implementation of legislative changes to HUD's budget and programs.
- Led the development of HUD's Performance Measures for submission with the FY 1997 budget.
- Directed focused efforts by field office leadership teams on working as "one HUD," under the coordination of Secretary's Representatives and State/Area Coordinators. Ensured adequate staffing allocation for the Field Management budget account, and provided a clear focus on customer service and outreach.
- Directed high-priority efforts at improved customer service. In particular, directed the development and dissemination of guidance for Secretary's Representatives and Coordinators in developing detailed Customer Service Plans for their jurisdictions.
- Directed the establishment of local Partnership Councils, involving field office management, labor representatives, and employees in collaborative efforts to solve local issues. With the director of the new Office of Departmental Equal Employment Opportunity, strengthened HUD's labor-management partnership through the establishment of partnership agreements with both unions and through close cooperation with management and union officials, particularly in Reinvention and Reorganization activities. Developed HUD-wide communication strategies for employee education on implementation of the Departmental Placement and Diversity Plans.
- Ensured effective communications with the Field by: initiating a series of regular conference calls with Secretary's Representatives; restructuring the Principal Staff meeting to allow for the participation of the Secretary's Representatives by phone; and initiated the development of an electronic bulletin board for Field Management to contain key policy related communications, e.g., high profile speeches, Congressional testimony, etc.

Q.3.a. HUD has been widely criticized for its management systems, and internal controls. What have been HUD's greatest accomplishments on the management side in this Administration? Where do you think you have made the most progress?

A.3.a. I believe that significant progress has been made in the introduction and consistent application of disciplined management tools. In the past 30 months, HUD has undertaken a decisive and organized process of evaluating and correcting systemic problems that have hampered the ability of the Department to be responsive to customer needs. This process includes development of a Strategic Performance System, improvements in business processes, and development of workforce training and human resources management tools.

We have made substantial progress in developing a Strategic Performance System (SPS) which supports HUD's changing role and mission. Comprehensive management planning is key to the SPS and requires the development of management plans, the incorporation of management controls, the oversight of the Management Committee, and performance reporting and accountability.

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Human resource management tools have been developed to provide staffing resources to priority areas, while meeting or exceeding overall Departmental staffing goals.

The Office of Departmental Equal Employment Opportunity has been reorganized and has established new requirements for the Department.

Q.3.b. What are the top management improvement priorities for the next 15 months?

A.3.b. Over the next 15 months, my priority is to continue to refine several initiatives that are underway. The field reorganization will proceed to establish HUD field offices as enabling agents for our customers. We are in the process of developing a place-based approach to service delivery, which will allow streamlined programs to be effectively administered to reflect local needs and priorities. A Model Office(s) is under development, to serve as a demonstration for subsequent implementation across the country.

Strategic performance planning, which links key policymaking, budget, and management processes, will continue to advance the many initiatives that have already been undertaken as part of a coherent unified approach to achieving the Department's mission. The strategic performance planning process will enable HUD to better manage its resources and processes, and to achieve a greater level of service to its constituencies.

The Management Committee, which I chair, meets bi-weekly and serves as a forum for integrated, top-management attention to cross-cutting operational items. Standing agenda items now include operational management, completion of the Field reorganization, performance management, technical investments, and management of HUD staff resources.

Q.3.c. What are the results that will let us know that you are making progress on these issues?

A.3.c. Efforts underway at the Department during Secretary Cisneros' administration, which have intensified over the past 12 months, represent a dramatic cultural change for the Department. Not only in terms of program changes and consolidation, BPR's,

and technical improvements, but also in terms of the behavior and accountability of HUD and its staff. This is a fundamental cultural change, led by the reinvention ideas, as to the basic roles and responsibilities of Government. This is a change which is of particular consequence to HUD.

Several results will demonstrate progress on the issues outlined earlier:

- We will be able to measure outcomes and improvements based on clearly defined goals and objectives.
- We will have solidified decisionmaking processes so that they are more cooperative and cross-cutting.
- We will begin to have demonstrated value-added relations with customers.
- We will have established a new structure that facilitates cross-cutting operations and creates efficiencies.

Q.4. How will the appropriations for HUD salaries and expenses in 1996 affect your ability to manage the Department? Are there adequate resources provided in appropriations to manage your current responsibilities and make progress on some of the fundamental management problems?

A.4. Departmental streamlining, including reducing staff levels and increasing span of control is underway, with buyouts, attrition and a hiring freeze utilized to reduce staff levels.

Continued reductions in staffing are a logical consequence of proposed program consolidation. In the restructuring of the HUD programs, a key consideration is the availability of trained staff to deliver programs and carry out the Department's responsibilities. Reductions will be phased in, with an eventual staffing level of about 7,500 by the year 2000.

The transition to a smaller organization will be accomplished in partnership with union representatives. It will be managed through redeployment and retraining of HUD staff. Several tools have been developed to support human resource management and workforce training.

Based on current information regarding HUD's proposed Salaries and Expenses (S&E) budget, I am cautiously confident that we can avoid a reduction-in-force (RIF) and continue to downsize in a logical and effective way. I am working closely with Secretary Cisneros and Principal Staff to analyze and coordinate staffing levels, workload distribution, field office realignment and technology improvements. Our focus will continue on training efforts, specifically in the skills necessary to meet program priorities and the development of improved technical systems.

Q.5. What are the administrative costs of transferring the Office of Fair Housing to the Department of Justice? What is your view of this proposal from the perspective of an administrator?

A.5. As you know, the Department and the Secretary oppose this proposal. Transferring HUD's Title VIII authority to Justice we believe to be inefficient. Recreating a fair housing case processing mechanism at Justice would increase, rather than decrease costs to the American taxpayer. At this point, we have not developed specific administrative cost estimates.

Q.6. This Committee has been particularly concerned about the troubles in HUD's insured multifamily housing inventory. FHA has reserved \$10 billion against \$43 billion in insurance and the Department is proposing changes in Section 8 which will force defaults on billions more. The Inspector General (IG) has highlighted the fact that HUD's multifamily housing servicing staff is extremely over-burdened with a workload 2-3 times heavier than State agencies. This overworked staff exposes the Government to greater losses. Is HUD allocating more resources to the multifamily problem?

A.6. Staffing for multifamily housing management is a Departmental priority. Last year, the Special Workout Assistance Team (SWAT) was organized to assist Field Offices in developing and implementing action plans to resolve physical, financial and ownership problems on troubled multifamily projects. The 24 SWAT team members provide a concentrated focus of skills and enforcement working in partnership with the field office to prevent marginal assignment/claim payment and to mitigate loss to the Government. Multifamily Housing in the field offices will continue to transform its organization into a single team operating under a matrix management process.

In FY 95, more than 50 percent of all HUD staff resources were allocated to the Office of Housing. We are attempting to work with Housing, particularly Multifamily, not only to increase the numbers and reduce ratios, but more importantly, to provide the special skills needed to do this highly technical work. In addition, we are analyzing and redefining the business practices to determine the most effective way to accomplish this work. The FY 96 S&E budget for multifamily housing will continue to reflect its priority status.

Q.7. With the recent budget cuts and calls by some to eliminate the Department, how would you characterize the employees' morale levels at HUD?

A.7. The Department recognizes that, in too many cases, morale has suffered, even beyond what you might expect during a season of constant and consistent change. However, I am personally encouraged by the incredible resiliency of HUD staff that I have spoken with in Headquarters and the Field. In the main, the staff has demonstrated an ability to understand the need for change and has participated in helping us plan for change.

During these uncertain times, the Department is committed to balancing the needs of the organization and the needs of employees. HUD people are central to all the Department is trying to achieve. HUD is committed to investing in the flexibility and capacity of HUD employees to respond to whatever the future holds while continuing to serve HUD's customers. In planning, announcing, and implementing change, the Department will continue to act with respect toward employees, safeguard their legal and negotiated rights, and promote their personal efforts to take charge of their work and their careers. HUD is working in partnership with national and local unions in these efforts.

Employees in most locations are concerned that their years of dedicated work have not earned them credibility in the eyes of Congress or the public; anxious about the possible personal impact of

Departmental streamlining, downsizing, or elimination; attentive to our priorities and Blueprint objectives, although sometimes with skepticism, realistic about the fact that continuing change is inevitable; and eager to get some firm decisions so they can do what makes sense with their lives.

The Department recognizes that the transformation process can be personally difficult and encourages employees to use this period as an opportunity to take charge of their careers. HUD is providing assistance and services to help HUD employees to do so. Departmental assistance for employees includes the following:

- The Employee Assistance Program offers confidential personal counseling that may be of particular help during times of stress.
- The Career Counseling Program, also confidential, offers self-assessment tools, career information, group workshops, and confidential individual services to employees in Headquarters and Field Offices.
- A comprehensive program of workshops and tools for employees is near completion. It will incorporate the HUD Training Academy's pilots of software tools, workshops, and other assistance. For example, practical workshops will be offered to help all employees make career decisions based on their own talents and interests and develop skills and tools to act on their choices. Over 150 Headquarters and Field staff have already participated in pilots of these workshops and strongly recommended their adoption as part of the Departmental program.
- HUD has an older workforce than many other agencies and is therefore increasing its pre-retirement assistance to help interested employees consider this option. Informational training will be offered widely in FY 1996. In addition, HUD has piloted a new type of workshop that engages employees in personal planning for retirement; based on very positive pilot feedback, this workshop will also be offered on a departmental basis this year.
- HUD is training our staff in multidisciplinary skills related to their professions; these stronger programmatic skills which will serve employees well either within HUD or outside. The Department is also expanding training in broad areas like leadership and customer service which serve both HUD's mission and broader individual development.
- The Department is actively using voluntary relocations as a means of redeploy staff to meet critical needs, thus valuing employees' personal preferences while building on existing staff and skills rather than increasing HUD's resource base.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM DWIGHT P. ROBINSON

Q.1. As HUD's chief operating officer, what do you consider to be the single most pressing management problem the Department will face in the coming year?

A.1. Over the next 15 months, my priority is to continue to refine several initiatives that are underway. The field reorganization will proceed to establish HUD field offices as enabling agents for our customers. We are in the process of developing a place-based approach to service delivery, which will allow streamlined programs to be effectively administered to reflect local needs and priorities.

A Model Office(s) is under development, to serve as a demonstration for subsequent implementation across the country.

Strategic performance planning, which links key policymaking, budget, and management processes, will continue to advance the many initiatives that have already been undertaken as part of a coherent unified approach to achieving the Department's mission. The strategic performance planning process will enable HUD to better manage its resources and processes, and to achieve a greater level of service to its constituencies.

The Management Committee, which I chair, meets bi-weekly and serves as a forum for integrated, top-management attention to cross-cutting operational items. Standing agenda items now include operational management, completion of the Field reorganization, performance management, technical investments, and management of HUD staff resources.

Efforts underway at the Department during Secretary Cisneros' administration, which have intensified over the past 12 months, represent a dramatic cultural change for the Department. Not only in terms of program changes and consolidation, BPR's, and technical improvements, but also in terms of the behavior and accountability of HUD and its staff. This is a fundamental cultural change, led by the reinvention ideas, as to the basic roles and responsibilities of Government. This is a change which is of particular consequence to HUD.

Several results will demonstrate progress on the issues outlined earlier:

- We will be able to measure outcomes and improvements based on clearly defined goals and objectives.
- We will have solidified decisionmaking processes so that they are more cooperative and cross-cutting.
- We will begin to have demonstrated value-added relations with customers.
- We will have established a new structure that facilitates cross-cutting operations and creates efficiencies.

Q.2. HUD has proposed to reduce its staffing levels by roughly 40 percent over the next 5 years. How will the Department assure that during this downsizing it will retain a qualified workforce with the capacity to carry out HUD's extensive housing and community development mission?

A.2. Departmental streamlining, including reducing staff levels and increasing span of control is underway, with buyouts, attrition, and a hiring freeze utilized to reduce staff levels.

Continued reductions in staffing are a logical consequence of proposed program consolidation. In the restructuring of the HUD programs, a key consideration is the availability of trained staff to deliver programs and carry out the Department's responsibilities. Reductions will be phased in, with an eventual staffing level of about 7,500 by the year 2000.

The transition to a smaller organization will be accomplished in partnership with union representatives. It will be managed through redeployment and retraining of HUD staff. Several tools have been developed to support human resource management and workforce training.

Based on current information regarding HUD's proposed Salaries and Expenses (S&E) budget, I am cautiously confident that we can avoid a reduction-in-force (RIF) and continue to downsize in a logical and effective way. I am working closely with Secretary Cisneros and Principal Staff to analyze and coordinate staffing levels, workload distribution, field office realignment and technology improvements. Our focus will continue on effort in training, specifically in the skills necessary to meet program priorities and the development of improved technical systems.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO
FROM JOHN A. KNUBEL**

Q.1. In July 1994 the National Academy of Public Administration (NAPA) Issued a report entitled "HUD: A Long-Term Agenda for Effective Performance." This report contained a number of proposals and suggestions for improving HUD's financial management and human resource capabilities. What progress has the Department made in implementing the proposals put forth in the NAPA report? What further improvements do you plan on implementing after your nomination has been confirmed?

A.1. HUD has and will continue to respond positively to the majority of the recommendations contained in that Report. For example, in Chapter Three of the Report (page 8), NAPA recommended that HUD "submit to OMB [the Office of Management and Budget] and Congress a comprehensive proposal to reorganize HUD 'programs' and group them under individual 'activities.'" This recommendation is reflected in Secretary Cisneros' "HUD Reinvention: *From Blueprint to Action*" dated March 1995, as were several other NAPA recommendations, such as the Federal Housing Administration becoming a Government corporation, "vouchering out" the public housing program, and consolidating 60 programs into 8 and ultimately 3 programs. The last action followed NAPA's comment that there was a need to "consolidate" programs which had gotten too complex, too redundant, and too difficult to manage. What follows is a detailed analysis of the relevant recommendations made in the Report Summary.

Chapter Three of the Report Summary deals with communities served. In response to the recommendations contained in that chapter, the Secretary has begun a "Place Based" Initiative. This initiative focuses on the development of a model office, and a partnership with private industry, to manage downsizing, and coordinate delivery of services to communities. On page 12 of the Report Summary are five recommendations. The first, regarding a single community planning mechanism, is in process. The second, to eliminate requests for data, is being addressed in the Financial Systems Integration Plan. The third, regarding demonstrating results, has been done. The remaining two, regarding consolidation of data calls and drafting amendments to the HUD Reform Act, are under consideration but are not feasible at this time, given resource constraints.

Chapter Five of the Report addresses the area of Management Systems and Initiatives. The Chapter contains many specific recommendations. On page 30, there are five recommendations. The first, on definition of functions and responsibilities of comptroller

positions, and the second, to complete reinvention of the Management Control Program, have been developed and implementation is in progress. The third, financial systems development and integration, and the fourth, assessments for new or revised program and administrative processes, are done and the fifth, regarding assessment of resource requirements, is scheduled to be addressed in the spring of 1996. Beginning on page 31 and continuing onto page 32, there are another seven recommendations. The first, chartering the Management Committee to assume functions, and the third, holding program assistant secretaries accountable, are in process. The second, to prepare guidance for the Strategic Performance System, the sixth, to develop and implement a HUD enterprise architecture, and the seventh, to formulate a strategy for investment in HUD's information technology, are done. The fourth, more field organization involvement, and the fifth, regarding an assessment of automation technology assistants in field offices, are under consideration but cannot be undertaken at this time due to resource constraints.

On pages 34 and 35 are another five. The first, to continue efforts regarding resource management processes, and fifth, to assess current workload indicators, are in process; the second, on management assessment, and the third, on inventories of functions and activities, are planned for the spring of 1996 and the fourth, regarding whether contract efforts would be more cost effective than in-house employees, cannot be undertaken at this time. The first recommendation on page 38, to institute a continuing program to secure an ongoing assessment of effectiveness of staff communication within HUD, has been done and the remaining recommendations in that chapter, while excellent ideas, require resources expenditures which are not available at this time.

HUD intends to continue to follow the thrust of this thoughtful Report. Frequent meetings have been scheduled with the NAPA Fellows to facilitate this process and followup.

Elsewhere in the Report Summary, it is recommended that program comptroller positions be created, systems consolidated, and longer term strategic planning be systemized. As noted above, these are among my primary objectives.

Q.2. Mr. Knubel, in your testimony you mentioned your role in helping to implement the Government Performance Results Act and the National Performance Results Act. What steps has HUD taken to comply with these two important pieces of legislation?

A.2. The Government Management Reform Act (referred to either as the NPR Act or GMRA) and the Government Performance and Results Act are two of the most important initiatives of this Administration.

HUD has made tremendous strides toward full compliance with the Government Performance and Results Act, ahead, I believe, of most Government agencies. Some of the more notable accomplishments are described below. One of the major shortcomings of HUD in the past has been provision of required information in both a timely and accurate manner. It is my intention to remedy that situation.

The consolidated financial statements will be filed within the allotted timeframe and every effort will be made to obtain a "qualified" clean opinion during FY 1996. One segment of our A-11 submission for FY 1997 is "Quality Management" and one of the four major goals/objectives in that area is "Accurate and Timely Information on Budget and Programs." This is both a Departmental and personal goal.

At the beginning of the National Performance Review, there was a request for agencies to volunteer for pilot programs regarding various management problems which were common to all facets of the Federal Government. One of these pilot programs was the Debt Collection Performance Agreement. HUD was pleased to volunteer for one of the first pilots of this program and I plan to oversee its execution as discussed below.

PILOT PROGRAM: DEBT COLLECTION PERFORMANCE AGREEMENT

As a result of a recommendation made by the National Performance Review, and as an initial step in demonstrating its ability to comply with the Government Performance and Results Act, HUD executed a Debt Collection Performance Agreement in FY 1994. This plan afforded HUD the opportunity to: (a) establish meaningful and achievable debt collection targets for significant program areas; (b) identify areas where the agency needs administrative assistance or relief from the Office of Management and Budget to address its asset management initiatives, such as asset sales; and (c) be held accountable for the specific commitments made in an agreement with the Office of Management and Budget (as opposed to requiring compliance and assessing performance against all Government-wide debt collection tools).

Part of the Government Performance and Results Act's intent is to provide managerial flexibility, discretion, and authority to those agencies that show initiative in improving performance and assuming greater accountability for their actions. In addition, the Department saw the Debt Collection Performance Agreement as a way to reflect the commitment to improve its debt collection results.

In implementing its FY 1994 plan, the Department included all programs with outstanding receivable balances in excess of \$100 million as of September 30, 1993. The Department's FY 1994 plan was judged to be "exemplar" by the Office of Management and Budget. FY 1994 achievement was significant as the Department collected receivables of \$2.2 billion, which represents 118 percent of the FY 1994 goal.

COMPLIANCE WITH THE GOVERNMENT PERFORMANCE AND RESULTS ACT

Two of the basic requirements of the Government Performance and Results Act are:

- Strategic Plan
- Program Plans

Although neither is required by law until FY 1999 (and by the Office of Management and Budget in FY 1998), HUD is justifiably proud of the fact that the Office of Management and Budget cited HUD as "in the vanguard" of agencies striving for compliance with

the Government Performance and Results Act. I will continue this momentum.

STRATEGIC PERFORMANCE SYSTEM

Beginning in FY 1994 HUD developed a Strategic Performance System linking program goals/objectives, performance measurement, and budget and human resources. This system includes the Secretary's Performance Report, which is maintained on a Lotus Notes framework, for limited access by all program areas. This allows the program areas to provide updates on the status of the progress toward their stated goals/objectives. A quarterly report is prepared for the Secretary and Senior Management. There is also a monthly Management Committee Report which brings to the attention of Senior Management issues that require immediate attention in order to meet stated goals/objectives. It also contains other information which help our management to do their job in a more efficient manner. This system has received accolades from all levels of management at HUD as a useful management tool.

Other Related Initiatives

PRESIDENTIAL PERFORMANCE AGREEMENTS

In FY 1994 the Secretary and President Clinton entered into a Presidential Performance Agreement. The Presidential Performance Agreement set forth the six objectives of the Secretary for his term of office. This document, together with the Secretary's First Year Priorities, Program Management Plans and Management Control Plans, formed the first Secretary's Performance Report. A subsequent Presidential Performance Agreement is being developed for FY 1996 and is drawn from the current Secretary's Performance Report, A-11 performance measures, and other documents.

SECRETARY'S PERFORMANCE REPORTING REVIEW

In April 1995, the Office of Management and Budget requested that HUD develop performance measures for inclusion with the FY 1997 A-11 budget submission. HUD was one of the first agencies to attempt to do this in our FY 1996 and was pleased to take part in this exercise. Negotiations were held between program areas and the Office of Management and Budget, with the Office of the Chief Financial Officer as a facilitator. The final product contains meaningful, measurable outcomes, with specific benchmarks. These items will be tied into our Secretary's Performance Report and will become an integral part of the overall planning process.

In addition, the Government Management Reform Act encourages franchising and we are investigating such an initiative for HUD in relocation.

Finally, we are working with the Office of Management and Budget to provide audited financial statements by April—versus today's level of August, so we can support the requirement of the Government Management Reform Act to develop Government-wide financial statements by FY 1997.

See also my response to Senator Sarbanes' question number 4 above.

Q.3. How can HUD achieve Its financial control and management goals In this time of diminishing Federal resources?

A.3. Streamlining, consolidating and "doing more with less" is today a pervasive theme at HUD as well as throughout the Administration. The Secretary's Reinvention Blueprint consolidates HUD's multiple programs into three, reduces personnel by over 30 percent in 5 years and establishes a "place based," market oriented customer driven programmatic initiative.

The Chief Financial Officer's Office under my leadership will have as its top priority the implementation of this strategy as well as the implementation of the Chief Financial Officer Act and related legislation executed through continuous improvements focussed in four areas:

(A) The application of better and more efficient technology and systems;

(B) Improvement in the processes governing service delivery;

(C) Better application of our human resources to these processes as well as improving personnel training, morale and professionalism which, over time, will raise the general levels of productivity and finally;

(D) Better coordination between our business processes, as well as more efficient measurement of customer needs. We will pursue better and more discriminatory evaluation of what constitutes customer satisfaction in light of the resources expended.

Specific Programs

Discussed below are some of the specific programs and initiatives in these areas that we'll be creating and continuing as we move forward.

(1) *Systems*

Coincidental with the implementation of a new core financial accounting system, we will consolidate our field accounting operations from 10 to 2 or 3 locations. We will then be able to realize the efficiencies from overhead reduction as well as work specialization. With the new system, customers will have better and more focused financial services to serve their needs.

Accounting responsibility will be better aligned with program management responsibilities. The role of program comptrollers will be enhanced.

Concurrent with our proposed field consolidation, we will be re-engineering our Headquarters accounting processes next year and expect improved efficiencies and customer service levels to result.

New technology and more integrated financial systems are being developed and implemented (e.g., Public and Indian Housing Section 8, and Housing Tenant Rental Assistance Certification System for rental assistance programs) which will improve financial management and our ability to deliver services. Today's multiple systems will be reduced from approximately 25 to 5 by the end of FY 1996.

(2) *Electronic Data Interchange*

The Department is implementing Electronic Data Interchanges wherever feasible to minimize paperwork, decrease staff processing needs, and improve customer response times.

(3) *Financial Controls*

One of the primary issues facing HUD during this Administration has been the systemic problems in the data systems and internal controls of the Department. Strong leadership is necessary to resolve these deficiencies and is critical to improving financial management of HUD's programs and the delivery of services to our customers. With primary responsibility for the financial systems integration efforts, the Chief Financial Officer is able to manage financial systems project activities, including the allocation of resources and funds to projects.

HUD's internal control environment remains one of its major systems and management problems. With the introduction of "Balanced Management" and the subsequent inclusion of Management Control Plans in the Secretary's Performance Report, we have been able to establish and monitor specific, risk-based performance goals by identifying significant internal control exposures and applying staff resources. As of the end of the Third Quarter, approximately half of the 48 set goals (20) have been met and another 18 are on target for completion by the end of FY 1995.

(4) *Human Resources Productivity*

In order to improve the capabilities and productivity of our employees, specific efforts have been taken to strengthen financial management training programs and get our employees to take advantage of them through the development of Individual Development Plans and the development of succession plans. This organizational assessment will be interactive so that input may be made at all management levels of employment.

(5) *Strategic Consolidation*

Consolidation of major programs, begun early in the Administration, continues. By FY 1997 we plan to have six major program area funds, as well as consolidated support functions, which will reduce personnel requirements. This cannot, however, be implemented without Congressional action. Current proposed legislation proposes this consolidation. As we consolidate and devolve programs, opportunities will present themselves to reduce the current program complexities and associated staff needed to manage them.

(6) *Performance Measurement*

HUD has taken the lead with the implementation of the Government Performance and Results Act, including a Departmental Strategic Plan and the Secretary's Performance Report which reflects specific goals set by program areas within HUD. These goals will continue to be monitored on a periodic basis and reported to the Secretary quarterly. The strategic plan integrates implementation of the Government Performance and Results Act with budget processes and streamlines current work processes. Here also, some participation by Congress is needed if achievement is to occur.

If the Government Performance and Results Act terminology and performance measures are not fully used by authorizing and appropriations committees, the Government Performance and Results Act will never be fully linked to budget formulation and execution. The Government Performance and Results Act would then lose much of its effect and value. Integral implementation of performance measurement systems will ensure maximum staff effectiveness in achieving results and focusing on those programs, activities, or locations which fail to produce efficient outcomes in light of the money spent to support them.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM JOHN A. KNUBEL

Q.1. HUD's management systems and financial controls have been widely criticized by the General Accounting Office and the Inspector General. What are your top priorities in this area? How many systems does the Department currently manage? What progress has been made toward getting these systems to communicate with each other? Are financial and program systems integrated?

A.1. This question is comprised of four parts: (a) top priorities; (b) number of current systems; (c) progress made toward integration; and (d) integration of financial and program systems.

A.1.a. My top priorities are management controls and improved system planning and integration. Management controls and systems are directly related. The latter is the foundation of the former.

Although good management controls depend on having good systems, good controls go beyond systems into the area of (a) having adequate and sound procedures as well as a management culture, supportive of good controls, in which managers are held accountable for implementing those procedures and monitoring—via audits, etc.—to ensure results. We are, and will be, continually working on these aspects of creating and monitoring adequate management controls. Two more specific initiatives I have started in the management control area are (a) working to more clearly define the point of reservation obligation (see also the answer to the next question) and (b) prioritizing our management of audit findings.

A.1.b. In 1994, the Department reported operating 104 financial or mixed systems, as defined by the Office of Management and Budget. Currently the Department is operating 88 systems which have been identified as either financial or mixed systems. Our goal is to reduce this number to five integrated systems. We currently have program modifications in place that will make this a reality. They are described below.

The Department first developed a Financial Systems Integration Plan in November 1991 to integrate its program and financial systems. The Financial Systems Integration Plan was revised in August 1993 and placed responsibility for the development of program systems with program offices to meet their individual program needs. Their program systems must, however, be integrated with the financial system in accordance with Departmental and Government-wide standards. In December 1993, the Department first is-

sued its Financial Systems Integration Standards to provide this framework for integration.

I intend to continue the implementation of the Department's Central Accounting and Program System as the highest system priority. This system combines *centralized* accounting with *decentralized* management responsibility. It puts management responsibility where it belongs: with Program Assistant Secretaries. The system will also serve as the "spine" of the integrated financial management system to process and record the Department's financial activities.

These projects are managed by the program offices and will be integrated into the agency accounting system. The five other projects are Housing's Tenant Rental Assistance Certification System to support the project-based Section 8 programs (in both Housing and Public and Indian Housing), the Consolidated Grants Management System, the Federal Housing Administration Mortgage Insurance System, the Public and Indian Housing Integrated Business System, and the Departmental budget system. Their timely, and cost effective, implementation is my top priority.

A second general system related priority is to prioritize the several financial systems development projects begun in the program areas in response to claims of material weaknesses (e.g., Tenant Rental Assistance Certification System) on the basis of the severity of the problems they treat and integrate them with the Department's integrated financial management general ledger or spine system. Financial and program systems are already integrated in the Public and Indian Housing Section 8 Programs and referred to as HUDCAPS. During FY 1996, all Public and Indian Housing program and accounting data currently not part of the various non-integrated systems into the Department's system will be converted into HUDCAPS primarily for use by the program offices in the field. We hope to follow this model and bring all the other major programs and their development projects into HUDCAPS in the next 2 years.

We have also recently created a team, under the leadership of our Public and Indian Housing Comptroller, who implemented the Section 8 Public and Indian Housing Tenant Rental Assistance Certification System, that will focus on the conversion of the Central Accounting and Program System "spine" system.

My third priority is to establish the link between the Government Performance and Results Act and systems. Emphasis will shift from process to outcomes and output measures and HUD will be re-oriented as we streamline. This link will allow better management planning and increased accuracy in budget planning.

The Department continues to make significant progress in the *implementation* of its financial management systems modernization program. In FY 1995, HUD completed its nationwide roll-out of the tenant-based Section 8 System. This system is totally integrated with the agency accounting system. In addition, the agency accounting system was implemented to process the Department's administrative accounting activities. Over the next 2 years, the Department will integrate the new program systems with the agency accounting "spine" system to create a fully integrated general ledger system.

A.1.c. Rather than building random system interfaces between old systems, which would be costly and ultimately inadequate, we will proceed with the implementation of our system integration plan as described above that will result in five interactive systems.

A.1.d. Our program and financial systems will be integrated to the extent it makes sense, consistent with the use of "state-of-the-art" technology and cost effectiveness. After that, we will be continuously striving to look for other opportunities to sensibly integrate our systems but I suspect we will have reached our limit of consolidation at five.

Q.2. What is the quality of the systems supporting the Section 8 program? Several years back, HUD changed its estimate [of] its contract renewal needs by \$1 billion more than originally requested—the night before the VA-HUD Appropriations Subcommittee marked up its bill. HUD has since invested much time and energy into CFS/TRACS system. What is the Department's level of confidence in the CFS/TRACS system?

A.2. The Department has made strides in developing financial management systems that support the Section 8 programs. In August 1993 the Department separated the CFS/Tenant Rental Assistance Certification System into two such projects, the Tenant Rental Assistance Certification System project for the project-based programs (in Housing) and the Public and Indian Housing Section 8 System for the tenant-based programs. Tenant Rental Assistance Certification System has been rolled out to all field offices to support the collection of tenant and contract data. The Offices of Housing, the Chief Financial Officer and Administration devoted the necessary resources to clean-up data problems to improve the accuracy of the budget forecasts. The Office of the Chief Financial Officer is also working with Administration to ensure budget accuracy and outlay estimates based on past experiences and make system changes to improve these estimates.

Last year, Public and Indian Housing completed the nationwide roll-out of its Section 8 System. Public and Indian Housing and the Chief Financial Officer's Office worked together to clean-up data discrepancies to help improve the accuracy of the contract data. In both instances, the project-based and the tenant-based systems, the improved quality of Section 8 data will enable the Department to produce more accurate, reliable, and timely budget forecasts. The Department can now accurately identify the number of Public and Indian Housing Section 8 contracts scheduled for renewal, the number of units supported, tenant characteristics, and unit costs to provide a more solid base on which to develop its budget. With this improved data quality and processes to continually improve the current system, we do not anticipate a recurrence of any last minute major modifications to budget estimates.

Q.3. At a hearing on HUD management issues last Congress, Secretary Cisneros was asked to give HUD's management a rating on a scale of 1 to 10. How do the financial systems and financial management system compare with the systems that you have encountered during other stages in your career?

A.3. Compared with the systems I have encountered in the private sector, and using that same scale of 1 to 10, I would rate us cur-

rently at a 4. In the testimony to which this question refers, the Secretary ranked HUD at a 3, "because of the continuing problem of systems" and "the inadequacy of resources." Although those factors continue to exist, we have made progress and my personal goal is to see HUD achieve a 7 when the majority of the work currently under the management of the Technology Investment Board is completed by the end of FY 1997, including Housing Tenant Rental Assistance Certification System, Grants Management and the spine in Central Accounting and Program System.

The financial systems at HUD must continue to be upgraded and improved. These systems are not sufficiently integrated, are outdated (generally built in the 1970's and 1980's), and contain unnecessary duplication. Systems of this type do not have the flexibility to meet the Department's current or future needs efficiently and will not adequately support the Department's Reinvention Blueprint and downsizing. But as the number of programs is reduced, this will make the systems management problem more manageable. With the implementation of a better integrated financial management system, the Department will be able to better support changes in the business of the new HUD.

In FY 1992, the Chief Financial Officer's Office served as the catalyst to develop a multiyear, Financial Systems Integration Plan, approved by the Office of Management and Budget, and has provided the continuity during two Administrations to build integrated, well-planned systems that link our various program financial systems through the Central Accounting and Program System (which will be largely completed in FY 1997 and will significantly reduce the number of systems at HUD). Once this full Financial Systems Integration Plan is completed (estimated completion: FY 1999), HUD can then more rapidly upgrade to better, faster technology as it is introduced in the years ahead—and be more abreast of what is done in the private sector. Still, the funding and lifecycle of HUD's systems tends to put Federal agencies behind in the latest technology with systems staying in place around twice as long as the private sector before being upgraded or replaced. This is largely because the private sector is more willing to invest in systems than Government but also due to other factors.

However, I would emphasize it is not cost effective to be on the "bleeding edge" of technology so each case must be evaluated on a case-by-case basis in light of the business need and available resources.

The financial systems at HUD have grown with its programs piecemeal over the years preceding the Chief Financial Officer Act of 1990 and much should be done even after completion of the current Financial Systems Integration Plan. For example, there is no "cost accounting" system that captures the direct and indirect costs associated with a particular program delivery. All of this has meant that determining how well HUD is performing, managing its programs, and forecasting its budget have been very labor intensive and inefficient efforts, often using older systems technology due to the lack of a Financial Systems Integration Plan, difficulties in procurement per Federal guidelines, and short funding systems efforts.

Q.4. By what standard[s] should your work over the next 15 months be judged? What outcomes should we look for that will indicate progress?

A.4. I have developed a detailed Chief Financial Officer Management Plan for FY 1996, some of which will carry over into FY 1997, as part of the Government Performance and Results Act effort I will be leading for HUD. Among other things, it includes the following goals:

(a) Implement the "spine" on the Central Accounting and Program System of the Financial Systems Integration Plan, that is, the collapse of some 30 odd accounting systems into 1. This is the integrated core accounting system (using the AMS/FFS software package off GSA's recommended schedule). This project, which was started in the late FY 1992/early FY 1993 timeframe, is entering its most critical period—when we integrate all other integrated Program/Mixed Financial systems like Public and Indian Housing Section 8 and Housing Tenant Rental Assistance Certification System into the new accounting system, while converting all other "program accounting" activities in the FY 1996/1997 timeframe. Another related goal in this area is to ensure that HUDCAPS—as defined in question 1, above—is implemented for the rest of HUD's major programs within this time period.

(b) Assist HUD leadership in the crucial "strategic planning" process to implement the Secretary's Blueprint for HUD in FY 1996–2000 recently sent to the Hill as part of the FY 1996 budget package.

(c) Conclude the basic implementation of the Government Performance and Results Act, including linking performance measures, management planning, budget and Departmental resources insofar as possible. By doing this, HUD will have a better measure of the cost effectiveness of program objectives. I have detailed other Government Performance and Results Act progress under Senator D'Amato's Question Number 2 (attached).

(d) Link the budget and planning processes to increase accuracy in budget projections. This includes working with the Assistant Secretary for Administration who has responsibility for the budget preparation, work to minimize the probability of a recurrence of Section 8 projection inaccuracies, better outlay forecasting and cleaning up unexpended balances so control can be exercised over program funds.

(e) Improve the audit management process, including establishment of priority levels for audit findings and linking of those priorities to resources.

(f) Decentralize the responsibility for the management of those audit recommendations to program offices while monitoring and directing programs through the Management Committee.

(g) Professionalize financial management throughout HUD, including clarifying program comptroller responsibilities and the identification of needed skills and training.

(h) Reorganize the Field Accounting Director structure and the central accounting organization within HUD.

(i) Oversee the management of financial systems resource allocation and implementation through the Technical Investment Board.

(j) Improve the accuracy and timeliness of the Department's Consolidated Financial statements so that the Department's statements progress to a qualified opinion ready in early spring, compared to today's "adverse" opinion with statements delivered in August.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM HALBERT C. DeCELL, III

Q.1. Mr. DeCell what will your priorities be as Assistant Secretary for Congressional and Intergovernmental Relations at HUD?

A.1. My priorities will be to continue to improve the already good lines of communications between the Congress, HUD, and the Administration, and those interested in housing, community development, and other urban programs. Only by working closely together can we better serve our constituent communities and customers in an era of diminishing resources. We must provide timely and accurate information on HUD programs and intentions to Members of Congress and public interest groups and make sure that Congressional concerns are raised in HUD deliberations.

Q.2. What should your office be doing better in terms of working more closely with program offices within the Department to ensure that Congress receives adequate information on all aspects of programs under its jurisdiction?

A.2. The Office of The Assistant Secretary for Congressional and Intergovernmental Relations is in frequent communication with program officials and provides comments regarding Congressional concerns in particular program areas. We have to continue to improve our ability to provide timely information and briefings to Members on issues and programs in which they might have an interest.

Q.3. As you know, a major public housing reform bill has been introduced in the Senate. In addition, other legislative proposals, including HUD's will create new relationships between HUD and other levels of Government that will greatly affect State and local governments. As Assistant Secretary, how will you coordinate with these other branches of Government?

A.3. The Intergovernmental Relations office under OCIR has developed and maintained extensive contacts with the State and local officials as well as a wide range of public interest and industry groups involved in HUD programs. OCIR provides briefings for Governors, Mayors, State legislators, and county officials in the areas of budget, program initiatives, and policy changes.

Q.4. As liaison to Congress, how will you work to ensure that grant notifications will be transmitted to affected Members of Congress, both Republican and Democrat?

A.4. As a former Congressional staffer, I realize the importance of timely and accurate information, particularly concerning grant information. It is my intention to continue the grant notification process that has been in place over the past several Administrations, while making improvements where possible. Traditionally, when grant notifications are received the Congressional Relations Officer transmits a hard copy of the notification through the Con-

gressional Mail Room or by fax to the appropriate Congressional offices, with special attention paid to Committee leadership.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES
FROM HALBERT C. DeCELL, III**

Q.1. How do you view your role and mission as Assistant Secretary for Congressional and Intergovernmental Relations?

A.1. The role of Assistant Secretary for Congressional and Intergovernmental Relations requires a broad knowledge of and respect for both the Congressional process and the Nation's housing, community development, and urban programs. Put simply, the Assistant Secretary should make sure the actions and views of the Department are expeditiously and accurately transmitted to Congress, while at the same time the concerns and counsel of Members and Committees are made known to the Secretary, HUD officials, and policymakers. In addition, it is vital to continue a working relationship with local and State officials, as well as other groups interested in HUD programs, in order to better serve the Nation's communities.

Q.2. What is your assessment of HUD's current relations on Capitol Hill?

A.2. I have been extremely appreciative of the conscientious willingness of the Members and their staffs to meet with me over the past 2 months and look forward to working with Congress on the important issues HUD is facing.

While there are certainly individual problems that arise in the course of running national programs, especially when the outcome isn't always positive, HUD responds to the many requests for information and assistance from Members and provides needed information to the Committees. I believe that the Secretary and Department have been as responsive as possible and are viewed favorably.

Q.3. How would you describe your qualifications for this job?

A.3. For more than 17 years, I worked in the House of Representatives for Congressman Jamie Whitten, much of it on the House Appropriations Committee, and developed a broad range of knowledge of both House and Senate procedures and people. I learned to work with officials and representatives from Government and the private sector to find solutions to mutual problems. I was responsible for housing and community development legislation on Congressman Whitten's staff and worked as associate staff on the House Appropriations Committee, including issues in the VA, HUD, and Independent Agencies Subcommittee. In dealings with staff, Members, and administrative officials, I worked hard to provide sound advice and counsel, and make sure my word was good.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO
FROM ELIZABETH K. JULIAN**

Q.1. In terms of enforcing the Fair Housing Act, what can HUD do better in terms of outreach and educational efforts?

A.1. Education and outreach are vital aspects of the Fair Housing Act. As the cabinet agency with expertise and extensive contacts with consumers and providers of housing and housing-related serv-

ices, HUD is uniquely positioned to promote voluntary compliance with the Fair Housing Act.

HUD has already begun to improve its education and outreach efforts. In the area of enforcement of the Fair Housing Act, staff have recently received considerable training and direction about educating and informing members of the public who have contact with the enforcement process. Enforcement staff, as well as the fair housing operations and compliance staff located in 38 communities around the country are conducting training and technical assistance activities for the public. Outreach to industry groups, civil rights advocates, and State and local governmental bodies has been emphasized.

My staff and I respond to many requests to provide insight into fair housing issues. Since I have been in FHEO, I have met with representatives of and/or made presentations to numerous groups, including the National Association of Realtors, the Consumer Bankers Association, the National Fair Housing Alliance, the Mortgage Bankers, the League of Cities, the National Community Development Association's Southeast Conference, and others. I intend to continue and expand FHEO's participation in both HUD-sponsored and other sponsored education and outreach events.

In addition, staff who conduct intake functions, conciliation functions and investigations have all received instruction on educating the parties with whom they deal on both the Fair Housing Act and the process which is mandated by the Act. This has included such specifics as revising the notice which goes to the parties when a complaint is served and providing a "conciliation fact sheet" to all parties to a complaint. Staff have also been instructed to explain more clearly and in greater detail what the Act does and does not require of complainants and respondents, and in general to encourage a more "customer friendly" atmosphere.

For cases which are not resolved by conciliation, HUD has also made a considerable effort to develop written decisions which help the parties understand the reasons why their case was decided the way it was. Considerable public education can occur, in my view, simply by ensuring that the parties to a complaint know what an impartial investigation has indicated about their case. Even if a party does not agree with the decision, providing enough information to understand the basis for the decision serves an important educational goal.

The Office of Fair Housing and Equal Opportunity has already made considerable effort to provide the public with its views on important issues. It has developed for the first time an internal guidance system which has also been made public regarding procedural and substantive issues under the Act. For example, FHEO has issued two sets of guidance over the last year or so which have been widely distributed. Guidance interpreting the applicability of the First Amendment to the Fair Housing Act was distributed in September of last year. In January, staff guidance describing the scope of the Fair Housing Act's coverage of real estate advertising was circulated. In my opinion, this guidance system has served the public well and I expect to continue it.

Our outreach and training efforts have also extended to state and local agencies conducting fair housing enforcement activities.

Better trained and more professional staff at every level of fair housing enforcement can improve the quality of the information which the public receives about fair housing laws. These agencies are required to attend training as part of their participation in HUD funding programs. Public input on the quality of the performance of these agencies is actively sought in assessing their performance.

Section 809 of the Fair Housing Act requires HUD to engage in voluntary compliance efforts with the housing and mortgage lending industries. While more could always be done in this arena, HUD over the past few years has used this authority to conduct extensive outreach efforts. HUD has entered into voluntary agreements with the National Association of Realtors, the National Association of Home Builders, the Association of Real Estate License Law Officials, and other housing industry organizations. The agreements provide a vehicle for the trade associations to educate their members about fair housing.

HUD reached its first voluntary agreement with a member of the mortgage lending industry last fall. The Mortgage Bankers Association entered into a "Best Practices" agreement with HUD in September, 1994. In May, I established a Best Practices Task Force within FHEO to work with mortgage lending companies interested in entering into individual agreements with the Department.

Much of HUD's education and outreach efforts are delegated to locally based non-profit organizations through the Fair Housing Initiatives Program (FHIP).

Through the Fair Housing Initiatives Program (FHIP) the Department has funded fair housing enforcement organizations and other nonprofit organizations to develop, implement, carry out or coordinate education and outreach programs. In FY 1995, 31 awards totalling \$6,485,629 were made to nonprofit organizations under the Education and Outreach Initiative. Unfortunately, there is no funding provided to HUD to continue the FHIP program in fiscal year 1996 in the House-passed appropriations bill. The Senate bill provides \$30 million dollars for fiscal 1996 for both the FHIP and FHAP programs, which, if included in the final 1996 appropriations bill will enable HUD to continue this important education and outreach program.

The Department is taking a truly reinvented approach to the implementation of the fair housing component of the Consolidated Plan Rule. As you know, the Department is required by law to administer its housing and community development programs in a manner that furthers fair housing. Since 1983 communities receiving CDBG funds have been required to certify that they affirmatively further fair housing as part of their grant process, but the Department has never given useful guidance on how to meet that obligation. As of last year, the Consolidated Plan Rule provides that this obligation can be met by (a) doing an Analysis of Impediments to Fair Housing in that community (b) developing and implementing an action plan to address those impediments and (c) maintaining records that will allow the public and HUD to review the process. There is no requirement that a plan be submitted to HUD for approval, but HUD may ask to review a plan in connection with evaluating a recipients performance at the conclusion of the grant

year. Instead of extensive, detailed, cookie-cutter regulatory direction, however, the Department has chosen to give assistance and guidance on how a jurisdiction might do the required analysis in the form of a Fair Housing Planning Manual. The Manual draws heavily for its guidance and suggestions from the over 100 jurisdictions that had voluntarily chosen the impediments analysis as their way of affirmatively furthering fair housing in the past. While detailed, the Manual is only a guide, and emphasizes that "one size does not fit all". HUD, through a series of locally based symposia around the country is seeking to work cooperatively with communities to assist them in making fair housing planning a truly informative and effective planning component of the Consolidated Plan process.

Q.2. In your testimony you stated that the conciliation rate for Fair Housing cases has recently risen to about 50 percent. Should HUD put more emphasis on conciliation and alternative dispute resolution to end housing discrimination and reduce the costs to the Department of time-consuming litigation?

A.2. Yes. I believe one of the main reasons Congress created the dual track for fair housing enforcement in 1988 was provide an efficient and effective administrative process by which to handle the thousands of complaints which would be filed under the Fair Housing Act. The overwhelming number of complaints HUD receives involve individual allegations of discrimination. While very important to those persons who believe their rights have been violated, those cases are often the kind that can and should be solved by conciliation or alternative dispute resolution.

HUD has initiated an alternative dispute resolution system for some cases which would ordinarily be heard by an Administrative Law Judge. Either HUD counsel or one of the parties to a complaint may seek the assistance of a "settlement judge" to attempt resolution before a hearing on the case. HUD is beginning to explore alternative dispute resolution techniques as part of its conciliation efforts as well, and HUD conciliators have received training on the successful use of ADR to resolve cases.

Of course, every case cannot and should not be settled. In some cases, the respondents are entitled to a dismissal of the claim. In other cases, the parties are legitimately far apart on their views of the relative strengths or weaknesses of their case or on the amount of damages which reasonably could be awarded in the case. However, under my direction, we will continue our commitment to explore fully the possibilities of non-litigation resolution in every appropriate case.

HUD's role should be to develop the facts through a professional and even-handed investigation that will give both parties the basis for honestly evaluating the case. HUD should then facilitate the resolution process by use of trained conciliators who have the skills to resolve conflict and promote understanding of the fair housing laws involved, while securing relief, as appropriate, for the complainant. While the actual percentage of Title VIII cases that go to litigation is quite small, I believe the nature of the cases in our inventory suggest more progress in this area is possible and is certainly desirable. The Office of Investigations is headed by an ex-

tremely competent and knowledgeable attorney formerly with the General Counsel's office, and she is working diligently to ensure that the current trend toward conciliation, based on timely and thorough investigations, continues.

Q.3. As you know, the functions of the Office of Fair Housing may be transferred to the Justice Department in the future. If and until then, how can the Office of Fair Housing Enforcement work more closely with other program departments within HUD to ensure Federal compliance with the goals of the Fair Housing Act?

A.3. HUD's office of Fair Housing and Equal Opportunity serves two primary functions. First, it administratively enforces the Fair Housing Act. Second, it oversees HUD's compliance with all of the civil rights laws, including the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and numerous Executive Orders.

I believe that it is important for the goals of nondiscrimination and fair housing to be an integral part of HUD's programs; as required by the Fair Housing Act. In fulfilling its responsibilities, the Office of Fair Housing is called upon to review and comment on activities and policies of the other program offices within HUD. In the past, I believe that FHEO has not always been as valued a part of the HUD team as it is today under Secretary Cisneros. As a result of his emphasis on the importance of the fair housing role in HUD, I believe that FHEO has begun to play a more collaborative and constructive role in insuring that HUD program policies and activities are consistent with HUD's responsibilities to enforce and promote fair housing.

I believe that I will be able to facilitate this relationship. Because of my prior experience in the Office of General Counsel, I worked closely with most of the other program offices and developed a good working relationship with the other Assistant Secretaries and their staffs. As a result of that experience I also have a perspective on their needs and concerns as they relate to fair housing, which helps me respond more effectively to differences between the offices. While in OGC, I instituted regular FHEO/OGC meetings to discuss issues of common concern. Such meetings are also periodically conducted with the other program offices on cross-cutting issues, and I would like to see those become a more institutionalized part of the way we do business.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM ELIZABETH K. JULIAN

Q.1. The Fair Housing Amendments Act requires that conciliation of discrimination begin after a complaint is filed and end when a charge or dismissal by the Secretary is issued. HUD regulations state that "Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint . . . will not participate or advise in the conciliation of the same complaint or in any factually related complaint." Has HUD been successful in separating the duties of the conciliator and the investigator? If not, how do you intend to ensure that the conciliation and investigation functions are effectively separated?

A.1. Not all offices have the functions of conciliator and investigator completely separated, although most of our field offices have separate conciliators, or assign another person to serve as conciliator at some point in most cases. It should be noted that the regulation quoted above continues: "Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation" This process happens in some cases.

The inability to meet this desirable standard has been due primarily to practical staffing constraints which will only be exacerbated by the expected downsizing of HUD. However, it is an approach that I have long endorsed, because I believe (a) the investigative process, no matter how well done, can create a personal dynamic that is not conducive to conciliation (b) the interpersonal skills of a good conciliator are not necessarily those of a good investigator.

I will ask our Deputy for Enforcement and our Director for the Office of Investigations to evaluate the ability of each field office to implement some degree of this separation of functions approach (if all cases could not be handled this way, certainly there should be a process for identifying those cases that would most seem to most benefit from such an approach). This evaluation will necessarily involve not only an assessment of person power but an assessment of skills. To the extent that field staff constraints make it impossible to fully implement such a system, we will explore ways to achieve the benefits another way. I anticipate that additional training will be necessary, in any event.

I am also interested in exploring the use of alternative dispute resolution resources in our field office communities. While in Dallas I served on the Board of the Dispute Mediation Service. DMS was very successful in utilizing both lawyers and non-lawyers as volunteers to provide ADR services to the community. I understand that this has been tried on a limited basis, and I think we should expand the use of such resources in appropriate cases and I intend to pursue that possibility.

Q.2.a. I am aware that you have been extremely helpful in trying to ensure that new occupancy standards will not be enforced without first adhering to a rulemaking process. However, I am concerned that the opinion letter radically changing occupancy standards, without prior consultation with affected parties, ever made it through the Departmental clearance process. Can you tell us what your—or FH&EO's—role was in the drafting or releasing of the July 12 Diaz memorandum on occupancy?

A.2.a. Yes. The guidance contained in the July 12, 1995 memo was a long time in the making. When I came to HUD I first heard about the "Keating Memo" in connection with familial status discrimination complaints. There was concern that the Keating Memo was being erroneously cited by many outside the Department as saying that a "two-person per bedroom" occupancy standard was a "safe harbor" under the Fair Housing Act. [In fact, the Keating Memo says explicitly that it does *not* imply "that the Department

will determine compliance with the Fair Housing Act based *solely* on the number of people permitted in each bedroom." The memo goes on to say that "in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances."]

However, because the memo was being cited as articulating only a "two-person per bedroom" standard, which the Office of Fair Housing thought was inconsistent with the Fair Housing Act, there was discussion between the General Counsel and affected program offices about rescinding it. I participated in some of those discussions while I was in the General Counsel's office. There was general agreement that formal rulemaking was the appropriate vehicle for any such policy. However, there was extended discussion about what, if any, policy should be used in the interim.

The guidance reflected in the July 12 memorandum was the product of extensive discussion involving the Office of Housing, Public and Indian Housing (PIH), and Fair Housing, as well as the General Counsel over many months. It was an attempt to replace what was being erroneously interpreted as an absolute person per bedroom standard with a square-footage-based "safe harbor" pending rulemaking. Once the policy calls were made the final memo was prepared by the General Counsel's office with concurrences from all offices involved, and sent to the Secretary for consideration. It was ultimately released by the General Counsel in July of this year.

Of course, once the memo came out, there was a strong negative reaction from the housing industry, though the move was generally endorsed by fair housing groups. The General Counsel held a meeting with representatives of the housing industry on September 2, which I attended with representatives from PIH and Housing. I listened to the concerns and comments. They included concern that the APA required any guidance to be through rulemaking (though they did not have that same concern about the Keating Memo, which they asked be reinstated), concern that they had not been consulted prior to the memo's issuance, and a strong belief that the interim square footage standard was one that would be harmful to owners and tenants, as well as impossible to administer. They also indicated that they supported an absolute two-person per bedroom standard.

I had believed, based on the discussions in which I had been involved, that interim guidance based on a national building code developed by persons in the private housing industry would be considered reasonable. A standard based on factors such as square footage had been endorsed the Occupancy Task Force which had included members of the industry. My belief that this would be acceptable as an interim standard was obviously wrong. Moreover, it was clear to me that the housing industry felt they had reason to believe that they were going to be consulted before any such guidance went out, and that they felt they had been betrayed by the issuance of the guidance without that input.

Their comments convinced me that the General Counsel's memo, which has been agreed to by all program offices earlier in the year, and which was motivated by a sincere desire to clarify confusion that had been caused by the Keating Memo in a manner that

furthered fair housing, had unfortunately only served to exacerbate the problem.

Given what I found to be persuasive concerns expressed by the representatives from the housing industry about the newly pronounced interim guidance, I determined that the best response would be to return to the status quo as it existed prior to the July 12 memo, until the formal rulemaking process could be completed. I therefore did what I felt I could do, which was to insure that FHEO did not pursue investigations or issue determinations based on the interim guidance until rulemaking put into place formal guidance on this difficult issue.

On the "process" question, both memos were developed as guidance internally without notice and public comment and were subject to the same criticism in that regard. That deficiency will be addressed with the publication of a proposed rule, which will hopefully lead to the promulgation of a final rule reflecting reasonable guidance on this issue at long last. [Also, see my response to Senator Sarbanes' question on this issue.]

Q.2.b. If a large family were denied a rental housing unit in a community where there was a significant presence of families with children, and a fair housing complaint claiming familial status were filed, would HUD pursue a reasonable cause determination based on discrimination because of the *family size*?

A.2.b. It would depend on the terms of the occupancy standard which resulted in the denial, and whether or not it was reasonable under the dictates of the Keating Memo in that particular case. The Keating Memo specifically states that "an occupancy policy which limits the number of *children* per unit is less likely to be reasonable than one which limits the number of *people* per unit."

In addition, the Department must be guided by case law which has held that an occupancy standard which is adopted, not to exclude all families with children, but only families with a large number of children, can be a violation of the familial status provisions of the Fair Housing Act. For example, in a case arising in Parkersburg, West Virginia and decided by an Administrative Law Judge in 1994, the owner of a house and the manager of the property were involved in declining to rent to a family with five children, stating to them that they had too many children, and that the owner did not like renting to large families because there had previously been damage to the house. Immediately after turning this family down, the owner established a policy limiting occupancy to two adults and two children. The Administrative Law Judge found that the Act had been violated, despite the evidence that the owner had previously rented to families with children, and awarded damages and a civil penalty. *Secretary on behalf of Theodore Paul et al v. Sams*, P-H Fair Housing—Fair Lending para 25,069, dec. March 11, 1994.

Of course, evidence of discriminatory motive to exclude larger minority families in the adoption of a policy would be problematic under the Act.

Q.3. Do you believe that the current Fair Housing Act covers all classes of individuals that should be protected under the Act?

A.3. Yes.

Q.4. Your background has been as an activist for fair housing and civil rights causes. Do you believe that your background as an activist and advocate will in any way affect your ability to enforce the Fair Housing Act fairly and evenhandedly, protecting the legitimate rights of protected classes as well as those in the real estate industry whose activities are covered under the Fair Housing Act?

Q.4. I do not believe my background would adversely affect my ability to enforce the Fair Housing Act fairly and evenhandedly. Housing discrimination is against the law, and I don't believe having spent a significant degree of my professional life enforcing the law on behalf of victims of discrimination is inconsistent with my being Assistant Secretary for Fair Housing. Further, I don't believe, based on my experience, that the real estate industry as a group is any less committed to fairness and promoting housing opportunity free of discrimination than I am. Indeed, since coming to FHEO I have had what I believe are constructive discussions with several representatives of the real estate industry groups regarding the importance of emphasizing their own role as "fair housing advocates," which I believe they are, rather than as adversaries.

Maintaining a good working relationship with representatives of the industry also plays an important role in helping HUD understand the concerns and perspective of the industry, since what may look at first blush like a good policy sometimes turns out not to have taken into account very real and practical problems it will cause—problems that could be averted by keeping open communication between the Department and all those affected by its policies. Of course, there will inevitably be times we have to agree to disagree, but I would hope that, working together, we could keep those at a minimum.

On a personal level, I believe that even during my days as an "activist" on fair housing issues, I was considered a fair and reasonable person by those with whom I dealt, not given to extreme positions, and willing to rethink my position when presented with a different and more persuasive way of looking at a problem. I am not afraid to say I was wrong, and I am not afraid to "think outside the box" on these issues. In fact, I think it is essential that anyone in a policy position be flexible and open to different and new approaches to old problems.

In spite of almost 30 years of the Fair Housing Act (not to mention two hundred plus years under the Constitution) we are still plagued by housing discrimination to a distressing degree. We obviously haven't figured out the most effective way to get at it and I don't think it is helpful to treat anyone as an adversary who is willing to pitch in an try to constructively address the problem. I believe that appreciation of and respect for the legitimate rights of the real estate industry are inherent in any constructive and mutually productive relationship, and I don't believe my longstanding commitment to and advocacy on behalf of fair housing will prevent me from having such a relationship.

As I indicated in my opening statement, in agreeing to come to HUD at all, and certainly in accepting the nomination for this position, I made a conscious choice to move to a new role, which entails a different set of responsibilities and perspectives. I would not have agreed to take on this position if I did not believe that I could and

would discharge my duties in a fair and evenhanded manner. I consider it an important measure of my success that those with whom I have dealt would agree.

Q.5. Concerns have been raised about overzealous and aggressive enforcement actions by FH&EO employees in the field who have perhaps not been appropriately sensitive to the First Amendment rights. How do you hope to ensure that both field and headquarters staff will be sufficiently trained to be sensitive to First Amendment rights and that the actions of field office staff will be effectively monitored by headquarters.

A.5. Under the guidance issued in September of 1994, any cases raising First Amendment issues come to Headquarters for analysis and decision as to whether an investigation should be pursued, as well as any final decision on the merits. That practice will continue. [These cases that even raise this issue amount to less than 1 percent of the total complaints processed since the guidance went into effect.]

I have already directed the Office of Investigations to conduct regular training on the First Amendment guidance to insure that cases are properly identified and handled at the intake level. In addition, I intend to emphasize supervisor accountability in the field, and to take appropriate personnel action to insure that my expectations in this regard will be met. If, after all the precautions and training, a case slips through the cracks, I will act immediately upon it coming to my attention to stop an inappropriate action, and so advise the parties. I cannot guarantee a bureaucracy free of error, but I believe it is important to the credibility of the Government that it tell the truth, and, where necessary, admit and correct its mistakes.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM ELIZABETH K. JULIAN

Q.1. On Wednesday, the Senate voted to transfer the Office of Fair Housing to the Department of Justice. How will this action affect fair housing enforcement in this country? What are your views of this action?

A.1. This measure, if implemented, will have a very negative impact on fair housing enforcement in this country. It will eliminate an effective and efficient mechanism by which individuals can have their complaints of discrimination heard and resolved satisfactorily, a mechanism which I do not believe can or will be replicated at the Department of Justice.

This Administration, under the leadership of the President and the Vice President, has been hard at work to reinvent the way Government functions and has conducted a thorough review of the structure and operations of all Federal agencies, including HUD. In the course of this review, several guiding principles have emerged. One of these principles is the conviction that in each substantive area, the regulatory and adjudicatory functions should reside in the same agency.

HUD is the agency with expertise and sensitivity to the housing industry and consumers of housing and related services. While the Department of Justice is certainly familiar with fair housing issues

through its role as Government litigator and chief enforcement agency for the civil rights laws, it does not have HUD's day-to-day interaction with the housing community. Conversely, HUD currently takes advantage of having an expert Title VIII staff to assist in considering matters of program compliance and other overlapping housing issues.

Under the Fair Housing Act (the Act), the Secretary of HUD is responsible for carrying out all of the functions relating to administrative enforcement of the Act. These functions include writing regulations, seeking voluntary compliance agreements with members of the housing industry, and establishing and overseeing a network of State and local agencies to process complaints under local fair housing laws and ordinances.

In addition, the Secretary is responsible for receiving complaints alleging violations of the Act, investigating *each* complaint to determine if there is reasonable cause to believe that a violation has occurred, and seeking voluntary conciliation for each complaint. If this effort is unsuccessful, and a formal finding is made, a hearing will be held before a HUD Administrative Law Judge unless either party chooses to go to Federal court. At that point, the Act assigns litigation authority to the Department of Justice (DOJ). DOJ also has independent authority under the Act to enforce the Act where it finds a pattern or practice of discrimination.

Under the Administration's "Reinventing Government" effort, specific attention has been given to the management structure of HUD's enforcement program. Early in this Administration, we determined that the organizational structure was poorly designed for purposes of receiving and acting on complaints of housing discrimination. Resources have been invested to completely overhaul this mechanism, significantly improving the organization's effectiveness.

In April, 1994, HUD's field organization was restructured to create ten regional enforcement centers to process fair housing complaints. Fair housing investigators now report directly to the Assistant Secretary for Fair Housing and Equal Opportunity, enhancing the substantive and policy oversight of their activities. Training for these investigators has been upgraded and systematized, and staff now have the benefit of new and appropriate technologic support. Further, under contract with Price-Waterhouse, solid management principles of the private sector are being applied to HUD's enforcement effort. As a result of this investment, HUD's Title VIII case processing system will be state of the art.

Following the structure mandated by the Fair Housing Act, as amended, HUD receives complaints from individuals who believe their fair housing rights have been abridged. It takes action on every bona fide complaint, usually by initiating an investigation and in all cases by seeking to conciliate the complaint. The vast majority of cases are resolved without litigation.

The civil rights office of DOJ is not an investigative agency with a field office structure to investigate individual complaints. The investigative arm of the Department of Justice is the Federal Bureau of Investigation (FBI). DOJ has neither the staff resources nor the administrative structure to handle the volume of cases handled routinely by HUD.

DOJ is engaged in prosecution and in civil litigation. If passed, the Appropriations bill would require DOJ to retool not just its management systems and personnel arrangements, but would involve a shift in emphasis to reflect new responsibilities for writing regulations and overseeing policies which have a vital impact on both the strength of the housing industry and home ownership and housing opportunities for American families.

In my view, establishing the organizational and physical infrastructure to handle fair housing complaints at the Justice Department represents a poor policy choice and a needless expenditure of funds. DOJ would simply be required to recreate a structure which already exists at HUD. The transfer of authority would not result in improvements in efficiency or function. Therefore, I join the Administration in strongly opposing the transfer of enforcement of Title VIII of the Civil Rights Act to the Department of Justice.

Q.2. The Senate VA-HUD appropriations bill also included an amendment by Senator Faircloth overturning a memorandum by HUD General Counsel Nelson Diaz that set new occupancy standards for apartments in the country. The amendment requires EUD to return to previous standards until HUD can promulgate rules on occupancy standards. Can you please give us your view on the issues and the amendment. Does the Department intend to issue new rules?

A.2. The issue of occupancy standards is one which is complex and multifaceted. Under the Fair Housing Act, discrimination against families with children is prohibited. While in some instances, the discrimination is overt and readily identified, in other cases, families with children have been excluded from housing, or limited to more expensive, larger units, through application of standards which restrict the number of people who may live in a unit of housing. In some cases, these policies also adversely affect people who are African-American, Hispanic or from other cultures and who have larger families.

At the same time, housing providers have legitimate concerns about overcrowding and building services and infrastructure which require that the obligation to serve families of large size should be limited in some reasonable fashion.

There has been much confusion since the passage of the Act regarding what are reasonable occupancy standards. In 1991 the General Counsel of the Department issued a memorandum which addressed this issue and identified a variety of factors which might be considered in assessing whether a particular standard violated the Act. However, this memorandum, which was intended to give guidance to HUD lawyers who then had the authority to issue determinations on whether or not the Act had been violated, was never codified into a regulation. It was widely misinterpreted by the housing industry and others who read the memorandum as authorizing a two person per bedroom standard without any consideration of the configuration of the unit or the actual size of bedrooms, and without consideration of state or local occupancy standards which were applicable to the housing.

On July 12, 1995, the current General Counsel issued a memorandum which was designed to clarify some of the confusion, to

provide the housing industry with an often-requested "safe harbor" for occupancy standards, and to announce impending rulemaking on the subject.

Because it became clear relatively quickly that this memorandum created other kinds of confusion among industry leaders, I directed, on September 9, that my staff not rely on the July 12 memorandum in conducting investigations or making determinations under the Act pending rulemaking. Staff have been directed to follow existing instructions on occupancy cases, which includes the provisions of the 1991 memo, as well as decisions made on specific cases interpreting that memorandum since it was issued until a final rule is promulgated. I have also directed that all cases involving these sorts of occupancy standards be reviewed by my staff in Headquarters before any determination is issued.

I view my actions as consistent with the Faircloth amendment to the HUD appropriations bill, and I had discussions with Jim Hyland of Senator Faircloth's staff on the rider before its adoption.

The General Counsel has stated publicly that he intends to engage in a rulemaking on this issue immediately. He has convened, and I or my staff have attended, three meetings with industry representatives, fair housing advocates, and attorneys interested in this issue to solicit input on the substance of such a rule.

My view of this issue is that it is primarily one where restrictions on maximum occupancy may reasonably be based on criteria such as (a) reasonable State or local occupancy standards set locally and applicable to much of the housing in this country, which the Fair Housing Act states explicitly are not affected by the Act's provisions or (b) business reasons which are unique to particular properties and which effectively set limits on unit or building occupancy based on sewer, water, construction, or similar objective constraints.

However, the difficulty with this approach is that it does not provide a uniform national standard or "safe harbor," such as an unqualified person per bedroom standard, which industry representatives have sought. A uniform standard based on the square footage of a particular unit is a possible third standard, which would provide the "safe harbor" which the industry has requested, but has other problems which suggest local flexibility might more effectively address.

All of these options, as well as others, will be considered in the Department's rulemaking process.

Q.3. On Wednesday, by voice vote, the Senate adopted a Feingold amendment that dropped the provision in the VA-HUD appropriations bill that would have prohibited the enforcement of fair housing laws against property insurers. I supported Senator Feingold. Could you describe your legal interpretation of this issue?

A.3. The Fair Housing Act, current regulations, and case law prohibit discrimination in the provision of property insurance. Any practice that denies insurance or varies the terms and conditions under which insurance is available because of race, color, religion, sex, handicap, familial status, or national origin is prohibited by the Act. The law requires HUD to investigate and resolve complaints of discrimination by property insurers. This has been the

consistent interpretation of the Act by HUD and the Justice Department in both Republican and Democratic Administrations. HUD's General Counsel Chester McGuire issued an opinion expressing this view in 1978 as did Drew Days, III, then Assistant Attorney General for Civil Rights, in testimony before Congress on amendments to the Act. This view has been reinforced several times in subsequent years.

Under the Act, it is unlawful to "otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin" (3604 (a)) and it is also a violation to "discriminate . . . in the provision of services or facilities in connection therewith" (3604 (b)). Application of the Act to insurance was made explicit in regulations issued by President Bush's Administration in 1989 implementing the Fair Housing Amendments Act of 1988. Those regulations outlaw "Refusing to provide . . . property or hazard insurance . . . or providing such . . . insurance differently" (24 C.F.R. Section 100.70(d)(4)) on a prohibited basis.

Every Federal court that has ruled on this issue, save one, has ruled that the Fair Housing Act applies to insurance (see *Dunn v. Midwestern Indemnity Mid-American Fire & Casualty Co.*, 472 F. Supp. 1106 (S.D. Ohio 1979) and *McDiarmid v. Economy Fire & Casualty Co.*, 604 F. Supp. 105 (S.D. Ohio 1984)). More recent precedents, *NAACP v. American Family Mutual Insurance Co.*, 978 F.2d 287 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2335 (1993), *Nationwide Mutual Insurance Co. v. Cisneros.*, 52 F. 3d 1351 (6th Cir. 1995), and *Strange v. Nationwide Mutual Insurance Co.*, No. 93-6585 (E.D. Pa. 9-22-94) reaffirmed this principal, according deference to HUD's substantive regulation promulgated in 1989 under standards established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Although the Fourth Circuit has held to the contrary, (*Mackey v. Nationwide Insurance Co.*, 724 F. 2d 419 (4th Cir. 1984)), that decision was rendered prior to the Department's regulation stating that insurance is covered by the Act. The Seventh Circuit, in the 1992 *American Family* case, in finding that insurance is covered, found the reasoning of the 1984 4th Circuit decision unpersuasive and stated that "events have bypassed *Mackey*" and found the regulations to be controlling, based upon the Department's statutory authority to issue them and the weight such regulations are accorded.

In May of this year, the U.S. Department of Justice settled a major insurance discrimination suit that had been brought under the Fair Housing Act. The Department of Justice found that the American Family Insurance Company had discriminated against African-American residents in Milwaukee, Wisconsin by instructing agents not to write policies in African American communities, failing to return phone calls or to keep appointments with residents of these neighborhoods, and offering inferior products when insurance was made available. One sales manager instructed several agents in writing to "Quit writing all those blacks."

THE MCCARRAN-FERGUSON ISSUE

The insurance industry argues that the McCarran-Ferguson Act of 1945 provides for State regulation of the insurance industry and

exempts the industry from the Fair Housing Act. HUD, the Department of Justice, and those courts that have addressed this issue, as noted above, reject this argument.

McCarran-Ferguson states that any Federal law that does not "specifically relate to the business of insurance" will be construed so as not to "invalidate, impair, or supersede" any State law "regulating the business of insurance." 15 U.S.C. Sec. 1012(b). This statute has been interpreted as invalidating any Federal law that falls within its coverage to the extent that the Federal law conflicts with State law. The Fair Housing Act complements, rather than conflicts with, State unfair trade practices acts and other State civil rights rules. Therefore, McCarran-Ferguson does not bar application of the Fair Housing Act. As the Sixth Circuit stated earlier this year in the case of *Nationwide v. Cisneros*, "HUD's interpretation of the [Fair Housing] Act is consistent with goals of the Act and a reasonable interpretation of the statute. . . . we hold that the McCarran-Ferguson Act does not preclude HUD's interpretation of the Act."

DUAL REGULATION OF THE INSURANCE INDUSTRY?

A related argument often asserted is that application of the Fair Housing Act would result in a burdensome system of dual regulation of the insurance industry. HUD has never proposed a system of insurance regulation, dual or otherwise. The Department has no interest in duplicating the States' rightful obligations to set rating laws, establish licensing procedures, address solvency matters, or administer any other aspect of the regulation of the business of insurance.

What HUD is obligated to do by law is enforce the Fair Housing Act. While State insurance statutes do address some civil rights matters, they simply do not provide the protections offered by the Act. Compared to most State laws, the Federal statute provides:

- Broader coverage (many States do not prohibit discrimination based on familial status and handicap),
- Additional procedural rights (a private right of action in Federal court, an investigation by HUD to determine if there is reasonable cause to believe a violation occurred, and representation by the Federal Government in an administrative hearing or before a Federal court), and
- More comprehensive remedies (civil penalties and punitive damages).

When Senator Feingold asked James Hall, one of the lead attorneys for the plaintiffs in the *American Family* case, why they chose to pursue the case under the Fair Housing Act rather than Wisconsin State laws, he emphasized the following points: (1) the superior range of remedies obtainable under the Fair Housing Act; (2) ambiguity as to whether or not State law provided for a private cause of action; and (3) for insurers that operate in more than one State (as does *American Family*) the convenience and cost effectiveness of utilizing a Federal law rather than each of several State laws. (*Congressional Record—Senate*, September 27, 1995, S. 14363)

Q.4. What have been your main areas of emphasis in the time since May when you became Acting Assistant Secretary?

A.4. Since arriving in the office of Fair Housing and Equal Opportunity, my primary emphasis has been on successful completion of activities and initiatives which were in progress at the time of the departure of the former Assistant Secretary, as well as getting up to speed on all aspects of the Office of Fair Housing, including personnel and administrative matters with which I was not familiar. The Department was in the process of implementing a field reorganization which had been in the works for over a year, and my arrival coincided with the last stages of that process. Frankly, a great deal of my time in these first few months has been spent in the area of administration because of natural fallout from the organizational and staff changes caused by the reorganization, and the uncertainty about FHEO's future.

On a policy level, I have focused my attention on the ongoing activities in the various Offices, trying to deal with problem issues and make constructive adjustments, but realizing that in the current unsettled environment, more comprehensive long-term planning is difficult. I have particularly focused on several important policy priorities.

FHEO had committed to obtaining a significant number of Best Practices agreements with Lending institutions during FY 1995 as part of its Voluntary Programs mandate under the FHA. However, due to staffing constraints, at the time of my arrival in May only three Agreements had actually been executed (they were "big" ones, however, including the MBA and Countrywide Mortgage Company). Responding to a staff proposal for enhancing our Best Practices effort, I approved the formation of a Best Practices Task Force, which utilized creative staffing approaches to increase the number of persons available to work on this project. By the end of fiscal year 1995, the Task Force had either agreements signed or agreed in principal 59 lenders. I believe these cooperative and collaborative partnerships will have a positive impact on opening housing markets to populations that have been shut out of the housing market in the past.

I have initiated a series of meetings with the Civil Rights Division of the Department of Justice to establish a closer working relationship with them on cases and issues of mutual concern, and will continue to seek to improve that relationship. In both the office of General Counsel and in FHEO, I believe we can make significant progress to improve policy coordination and communication on Fair Housing Act and other civil rights issues.

I have supported the completion of the Business Practices Redesign (BPR) analysis of our Fair Housing Act enforcement. The BPR process, which is currently being conducted by Price-Waterhouse, is evaluating all of the processes used for intake, investigation, conciliation, and making determinations in cases filed under the Act, with the goal of making recommendations which will improve the process nationally. The BPR process is well underway, with assessments of processes used in our field offices and headquarters already performed and an envisioning and "quick fix" process already underway. We expect a preliminary report from this process in January or February.

I have been meeting with individuals and groups to develop an understanding of their issues and concerns as they related to

HUD's fair housing enforcement. These groups include the National Association of Realtors, the Mortgage Bankers Association, the National League of Cities, various disability rights groups, the Leadership Conference on Civil Rights, the Consumer Bankers Association, and officials of numerous multifamily housing organizations. I have also devoted a lot of time to analyzing issues which appear to have created problems in the past, such as our First Amendment policy. My thought has been directed both at determining the appropriate policy, and at establishing reliable mechanisms to ensure that policies adopted at the Headquarters level are fully and effectively implemented in the field.

In short, I have spent 4½ months informing myself on the whole range of issues with which the Office of Fair Housing and Equal Opportunity must deal, both internally and externally, as well as introducing and/or reacquainting myself to the various interests and constituent groups who regularly interact with and are affected by the Office and its policies.

Q.5. That are your top priorities for the next 15 months?

A.5. While all priorities must, given the nature of the work, be set with flexibility in mind, I hope to keep my attention focused on the following six areas:

Title VIII

I will continue the effort begun over last 2 years to improve the handling of Title VIII complaints in the 10 field offices. This Administration has made significant progress in improving the quality of work on Title VIII complaints and in reducing the time it takes to resolve them. Through the BPR process, I expect we will further improve the quality of our work, and the efficiency of our operations. Through training and the publication of the first ever enforcement manual for fair housing field staff, I hope to instill a greater sense of professionalism and a higher level of expertise in FHEO staff. I consider even-handedness in investigations and conciliations a hallmark of professionalism. Further, I will be considering whether any changes or additional guidance are necessary in the areas of conciliation and intake.

Voluntary Programs

I will continue to develop partnerships through the Best Practices Agreements. I hope to have 75 to 100 agreements signed by the end of the calendar year.

Funded Programs

Assuming that the Congress provides HUD with funding for the Fair Housing Initiatives Program and the Fair Housing Assistance Program in fiscal year 1996, I hope to continue the progress that has been made in improving the quality and efficiency of our administration of both of these programs. For FHIP, I plan to increase our performance monitoring of grantees. Under the FHAP program, I plan to work with local agencies to insure that the staffs are fully trained and the agencies are capable of maintaining their substantially equivalent status.

Fair Housing Planning

My emphasis in implementing the fair housing planning provisions, applicable to State and local agencies that receive CDBG and HOME funds, will be to work closely with local communities to make the planning process a meaningful and constructive one, rather than a burden. I plan to emphasize educating local communities and community members about their rights under the fair housing planning process.

Program Compliance

Finally, insuring the Department's own programs and activities are consistent with the fair-housing laws will be a high priority for me. HUD must set an example by the way it does its business. Government can never be a credible enforcer of laws which it does not itself take seriously.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

October 23, 1995

Honorable Alfonse M. D'Amato
United States Senate
Washington, D.C. 20510

Dear Senator D'Amato:

I am pleased to forward to you the completed answers to Senator Bond's Supplemental questions for the record for Elizabeth K. Julian, Assistant Secretary for Fair Housing and Equal Opportunity.

I am happy to see that under your leadership the Committee is working expeditiously to fill these extremely key posts. As always, I look forward to working with you in the future and continuing our partnership to ensure housing opportunities for all Americans.

Sincerely,


Henry G. Cisneros

Enclosures

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BOND FROM

ELIZABETH K. JULIAN

October 11, 1995

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

The Honorable Christopher S. Bond
Senate Committee on Banking and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Bond:

I would like to take this opportunity to respond to the issues that were raised during your opening statement before the Senate Banking Committee on September 29, 1995, concerning my ability to administer the Office of Fair Housing and Equal Opportunity at HUD. As an initial matter, it is important to note, that the General Counsel, HUD's Designated Agency Ethics Official, and the U.S. Office of Government Ethics have reviewed the issues you've raised and have determined that I am in full compliance with all ethical laws and regulations.

As required by law, I have recused myself from participating in matters in which I have a financial interest. I have recused myself from participating in particular matters over which my spouse's law firm provides representation as well as the pending appeal of an attorney fee award against the Department. In addition, I have executed recusals from particular matters which may create an appearance of loss of impartiality despite the fact that I have no continuing financial interest in the matter. These include the pending law suits of Walker v. City of Dallas, HUD and DHA and Young v. Cisneros., independent of the attorney fee issue in the Walker case. In so doing, I have been advised by counsel that I have gone beyond what was required of me by statute and regulation.

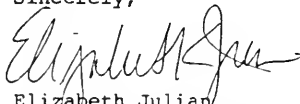
Your statement raised two specific concerns that I would like to address. First, it appears that you are concerned that pending litigation, namely, an appeal of an attorney fee award against HUD in the Walker litigation, may create an appearance of a conflict of interest with my nomination to the position of Assistant Secretary for Fair Housing and Equal Opportunity. As indicated above, to avoid such appearance concerns, I have recused myself from participating in all particular matters that involve this case. Notwithstanding, the Assistant Secretary for Fair Housing and Equal Opportunity has no decision making authority in fee award cases at HUD. The Office of the General Counsel is the office in HUD that works in concert with the Department of Justice to resolve fee award cases. Moreover, in order to further eliminate even the appearance of a conflict, please be advised that, although the order entered by the Court

found HUD, the City of Dallas and the Dallas Public Housing Authority jointly and severably liable for fees, the order for payment of fees entered by the Court on my behalf was directed only to the City of Dallas at my request. Again, this action goes beyond what was required of me by statute and regulation.

Second, you expressed concern that my involvement in making and implementing policy decisions that result from final decisions in the above-referenced cases creates the appearance of a conflict of interest. Rest assured that any appearance that may arise under such circumstances, would be, at best, illusory. As an initial matter, I have no continuing financial interest in these pending law suits. My financial interest with regard to these cases is limited to the appeal of the attorney fee award in Walker, which was for time expended in 1992 and 1993, prior to my coming to HUD, and which involves a matter that is separate and distinct from the pending litigation on the merits. In addition, the U.S. Office of Government Ethics has determined that participation in the "consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons" does not create a conflict of interest.

I hope that I have adequately addressed your concerns. I would be happy to meet with you to discuss this or other matters in connection with my nomination at your convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Elizabeth Julian". The signature is fluid and cursive, with a large initial "E" and "J".

Elizabeth Julian
Acting Deputy Assistant Secretary
for Policy and Initiatives

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BOND FROM ELIZABETH K. JULIAN

Q.1.a. Ms. Julian, during your practice of law in Texas you were one of the lead attorneys on a number of class actions housing discrimination cases in which the Department of Housing and Urban Development was and is a defendant. Please list all cases in which you were an attorney and HUD was or is a defendant? What is the status of these cases?

A.1.a. Cases which are pending against HUD:

Walker v. HUD, et al—The 1987 Consent Decree was vacated at request of Plaintiffs. I have asked the General Counsel to advise you of the current status of the case since I have not been involved in the matter since I came to HUD.

Young v. Cisneros—I know generally that a final remedy order is in the implementation stage. Again, I have requested that the General Counsel provide you with the current status.

NAACP v. Housing Authority of the City of Commerce—This is a case against the Commerce Housing Authority and HUD which was brought by my ex-law partner early January of 1988 just as I was leaving the firm to be executive director of legal services. My name erroneously appeared on the signature page of the pleading but I was never involved in the litigation in any way. (Apparently our secretary used the signature file on the computer which had not yet removed my name.) I did not know that I was even on the pleading until I came to HUD and it was pointed out, at which time I recused myself from that case as well. That recusal continues in effect, but I was not counsel for plaintiffs and I have never had any financial interest in the case. Again, I have asked the General Counsel to advise you of the current status of that case.

Cases which are concluded against HUD:

Clients Council v. Pierce—Housing desegregation case in Texarkana, Arkansas, concluded in 1983 with final remedy order.

Givens v. Prairie Creek Apts, et al—Title VIII case against an apartment owner, concluded in 1985 with judgment entered in favor of defendants.

Wooten v. DHA, et al—Suit to stop demolition of Washington Place public housing project in Dallas, final settlement entered in 1984.

Lee v. Kemp—This case involved homeless issues and concluded in 1989 with a settlement (I was not very involved in this case and don't remember any of the details.)

Banks v. Robin Square, et al—This is a case brought on behalf of African-American residents of a slum Section 8 rehab project called Robin Square against the Dallas Housing Authority and the owners of Robin Square. HUD was briefly brought in as a third party defendant by the Dallas Housing Authority in the litigation in 1988. No substantive claims were asserted against HUD by plaintiffs. However, interim fees were sought against HUD for opposing a preliminary injunction sought by plaintiffs. The representation occurred while I was an employee of Legal Services of North Texas, and any award for fees and expenses belongs to them. I have no financial interest in the matter. HUD was dismissed from

the case in 1988. However, I recused myself in this case when I came to HUD to avoid an appearance of conflict.

This is complete to the best of my memory, though it is possible, that there was a case somewhere during the past 20 years that I have forgotten about, but it would be long since over.

Q.1.b. Do you have any continuing economic interest in any of these cases? If so, please identify the case and the extent and nature of the economic interest? Please describe all parties with an economic interest in these cases, the extent of the economic interest, and your relationship to these parties?

A.1.b. Walker—As previously indicated to the Committee, I have an interest in an attorneys fees award for a portion of the case, which was pending when I came to work at HUD. The recently entered fee opinion found the city of Dallas, the Dallas Housing Authority, and HUD jointly and severally liable for a portion of the fees sought. The Court has entered an order directing the city of Dallas (not HUD) to pay these fees, at my request. (The joint and several portion is approximately \$122,000, but my total award is approximately \$167,000, which includes fees attributed solely to the city and the Housing Authority.) The issue is in the fee application involved attempts to modify the Consent Decree with the city of Dallas. (The city of Dallas entered into a separate Consent Decree with the Plaintiffs, to which HUD is not a party.) The defendants attempted to get the Court to approve a renovation plan for the West Dallas Projects which would have required modification of the City Consent Decree. Plaintiffs successfully opposed those efforts, and the matter was concluded when the motions were withdrawn in 1993.

I have no other financial interest in these cases.

To the best of my knowledge the other persons who have a financial interest in these cases include the plaintiffs, the city of Dallas, the Dallas Housing Authority, the lawyers for all the defendants, and the Law Office of Michael M. Daniel, P.C. I do not know the exact amount of the interest, but it would be in the nature of attorneys fees that may be paid or awarded in connection with the representation, or in the nature of damages (not against HUD) for the plaintiffs.

I have no formal relationship with any of the parties. I was law partners with Michael Daniel from January 1981–February 1988. I continued to be cocounsel with his firm in the cases listed above after I returned to solo private practice in 1990 and we continue to be friends. I also have professional and personal friendships that have developed over the years with the various lawyers for the defendants and individuals in official positions with the institutional defendants. In addition, of course, I had an attorney-client relationship with the plaintiffs, which I ended when I came to HUD and withdrew from that representation.

Q.2.a. Ms. Julian, it is my understand that at least two of the class action housing discrimination cases, *Young v. Cisneros* and *Walker v. Cisneros*, of which you were a lead attorney are, in your own words, “ongoing and have resulted in policy, operational, regulatory, and structural changes in HUD, local PHA’s, and the cities involved.” These cases are likely to continue to have a far-reaching

and pervasive impact on HUD's overall fair housing policies, initiatives, and future legal positions. Please fully describe the facts and circumstances of each case and the principles of fair housing law which are central to each case?

A.2.a. The facts in *Young* are set out in the attached opinion by the Court (Attachment "A"), as are the principles of fair housing law. The *Walker* case alleged that the Dallas Housing Authority, HUD, and the city of Dallas had created a de jure segregated system of public housing in the city of Dallas, had failed to disestablish that dual system and instead had perpetuated that system to the detriment of the African-American Plaintiffs Class by subjecting them to a racially separate and unequal assisted housing system. The principles of law were essentially the same as those in the *Young* and *Clients' Council* cases. Those cases involve established constitutional principles regarding state imposed racial segregation, and the duty to disestablish that system and remove the harmful vestiges of that system as set out in the Court's opinion. The Fair Housing Act causes of action are in addition to, but essentially based on the same facts as, the constitutional claims.

Q.2.b. Even though you have agreed to recuse yourself from active involvement in *Young* and *Walker*, how do you plan to perform your duties as Assistant Secretary of Fair Housing and Equal Opportunity without consideration of your previous position as a lead attorney in these cases against the Department of Housing and Urban Development?

A.2.b. As a lawyer, I represented my clients to the best of my ability. The knowledge and experience about HUD programs and fair housing law, much of it learned in the context of my legal practice, is one of the things that makes me qualified for this position. However, as Assistant Secretary I would not be constrained by positions I may have taken on behalf of clients when I was in private practice. As Assistant Secretary I will make decisions and exercise judgment based upon my own independent assessment of what would be the most appropriate policies for the Department to follow, consistent with the approval of the Secretary. I will not pursue policy positions which I do not believe are legally justified or wise policy.

As I indicated in my opening statement, in agreeing to come to HUD at all, and certainly in accepting the nomination for this position, I made a conscious choice to move to a new role, which entails a different set of responsibilities and perspectives. I would not have agreed to take on this position if I did not believe that I could and would discharge my duties consistent with those responsibilities.

Q.3. Ms. Julian, since your employment by the Department of Housing and Urban Development, have you had any contact with any of the plaintiffs, plaintiffs' attorneys or interested parties in either *Young* or *Walker*? Please identify all contacts and the complete subject matter of all such contacts.

A.3. I don't believe I have had contact with any of the plaintiffs since I came to HUD. I have seen and/or talked to Mike Daniel periodically over the past 2 years when I am home. I have no way of identifying all those contacts, which have been personal and social in nature (our children are friends). I called him to get infor-

mation about some dates and circumstances I could not remember to assist me in answering these questions. I called Laura Beshara, a lawyer in Michael Daniel's law firm, when she had her baby sometime this past year. I have probably seen some of the lawyers for the city or the Housing Authority at social functions sometime over the past 2 years, and, of course, I have had regular contact with the attorneys for HUD. There is simply no way to identify all the contacts and subject matter of such contacts over the past 2 years.

Q.4.a. Ms. Julian, you currently have an outstanding award of attorney fees of approximately \$167,000 against the Department of Housing and Urban Development. That is the basis of that award and what steps have you taken to ensure that no actions taken by you will affect the appeal by HUD or Justice of this award?

A.4.a. The fee opinion found the city of Dallas, the Dallas Housing Authority, and HUD jointly and severally liable for a portion of the fees sought (approximately \$122,000). (The basis for the fee award is the Court's determination that plaintiffs were prevailing parties in their opposition to the motion by the city of Dallas and HUD to approve the West Dallas Agreement, which would have resulted in a modification of the Consent Decree between the City and the Plaintiffs, as well as fees for monitoring and enforcing the City Consent Decree.

When I came to HUD I reviewed the conflict of interest issues related to these cases with ethics counsel in the Department to make sure I took whatever action would be appropriate in that regard. They prepared and I executed the recusals that they deemed sufficient to address any conflict and appearance of conflict issues. When I became acting deputy assistant secretary I renewed the recusals in the *Walker* and *Young* cases. In addition, as I have advised you by letter, at my request, the Court entered an order directed only toward the city of Dallas for payment of my fees, though I do not believe that was necessary in light of my recusals. I have been and continue to be prepared to take what ever steps the ethics officials advise me are necessary and appropriate in this regard.

Q.4.b. Do you or your husband have the possibility for any other attorney fee award for any cases in which the Department of Housing and Urban Development is the defendant (including those previously adjudicated or awaiting final adjudication)?

A.4.b. No. The *Walker* fee was the only award in which we retain any interest (my husband is representing me in the appeal).

Q.5.a. Ms. Julian, what is the role of HUD in addressing issues concerning allegations of discrimination in the provision of insurance, including housing insurance, under the Fair Housing Act?

A.5.a. The Fair Housing Act (Act), current regulations, and case law require HUD to investigate and resolve complaints of discrimination by property insurers.

Generally, in order to secure a mortgage loan for the purchase of a home, a buyer is required to have property insurance. Such insurance is also required to maintain a dwelling. Therefore, availability of insurance on equitable terms is essential to enjoy the full

benefits and privileges of home ownership. When a buyer is denied insurance because of his or her race, color, religion, sex, handicap, familial status, or national origin then housing is effectively made unavailable to that buyer in violation of the Fair Housing Act. As the Seventh Circuit concluded in the *American Family* case, "No insurance, no loan; no loan, no house;" (*NAACP v. American Family Mutual Insurance Co.*, 978 F. 2d 287 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2335 (1993)).

This has been the consistent interpretation of the Fair Housing Act by HUD and the Department of Justice in both Republican and Democratic Administrations. HUD's General Counsel Chester McGuire issued an opinion expressing this view in 1978 as did then Assistant Attorney General for Civil Rights, Drew S. Days, III, when testifying on legislation to amend the Act. This view has been reasserted several times in the intervening years.

The Bush Administration explicitly applied the Act to insurance when promulgating the 1989 regulations implementing the Fair Housing Amendments Act of 1988. And, in his recent Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, President Clinton made explicit reference to the coverage of property insurance discrimination under the Fair Housing Act when he called for HUD to promulgate regulations describing the nature and scope of coverage and the conduct prohibited by property insurers under the Fair Housing Act.

Every Federal court that has ruled on this issue, save one, has reaffirmed this authority by concluding that the Fair Housing Act applies to insurance. *Dunn v. Midwestern Indemnity Mid-American; Fire & Casualty Co.*, 472 F. Supp. 1106 (S.D. Ohio 1979) and *McDiarmid v. Economy Fire & Casualty Co.*, 604 F. Supp. 105 (S.D. Ohio 1984) established the applicability of the Fair Housing Act to discriminatory insurance practices. More recent precedents, *NAACP v. American Family Mutual Insurance Co.*, 978 F.2d 287 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2335 (1993), *Nationwide Mutual Insurance Co. v. Cisneros*, No. C3-92-52 (S.D. Ohio, February 24, 1994), and *Strange v. Nationwide Mutual Insurance Co.*, No. 93-6585 (E.D. Pa. 9-22-94) reaffirmed this principal, according deference to HUD's substantive regulation promulgated in 1989 under standards established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

The one dissenting case, [*Mackey v. Nationwide*, 724 F.2d 419 (4th Cir. 1984)] was decided before that 1989 regulation was written. In the 1992 *American Family* case the Seventh Circuit ruled that the Act applied to insurance and cited HUD's 1989 rule when it concluded "events had bypassed Mackey."

Just recently, on May 1, 1995, the Sixth Circuit followed the Seventh Circuit and joined the long line of courts that have upheld the Department's jurisdiction in a suit filed by the Nationwide Insurance Company contesting the HUD's authority to investigate an allegation of insurance discrimination under the Act. *Nationwide Mutual Ins. Co. v. Cisneros*, No. 94-3296 (6th Cir. May 1, 1995).

Q.5.b. What is the role of States in addressing issues concerning allegations of discrimination in the provision of insurance, including housing insurance, under the Fair Housing Act?

A.5.b. Each State regulates the insurance business by, among other things, setting rating laws, establishing licensing procedures, and addressing solvency matters. Although there are model insurance laws, many State laws differ from one another in their coverage of insurance matters. In contrast, the Act establishes national protections against property insurance discrimination. While many State insurance laws do address some civil rights matters, they simply do not provide the protections offered by the Fair Housing Act. Unlike most State laws, the Federal statute provides:

- Broader coverage (many States do not prohibit discrimination on the basis of familial status or handicap);
- Additional procedural rights (a private right of action in Federal court, an investigation by HUD to determine if there is reasonable cause to believe a violation occurred, and representation by the Federal Government in an administrative hearing or before a Federal court), and
- More comprehensive remedies (civil penalties and punitive damages).

The Fair Housing Act contemplates that State or local governments may also have laws which provide protection against discrimination in property insurance. Where these civil rights laws are "substantially equivalent" to the Act because, among other things, they offer the same remedies and rights provided by the Federal law, the Department will so certify. In those situations, the Department will refer complaints received to the State agency for processing and will reimburse the State for its activities.

Q.5.c. Please be very specific in describing what you believe constitutes discrimination in the provision of housing insurance, both under State law and under the Fair Housing Act?

A.5.c. When enacting Federal civil rights laws, including the Fair Housing Act in 1968 and the Fair Housing Amendments Act in 1988, Congress gave meaning to the Federal constitutional guarantee against discrimination and rejected the uncertainties and the inconsistencies which result from a State-by-State approach to protecting this fundamental right.

The Federal Fair Housing Act prohibits any practice that denies insurance or varies the terms and conditions under which insurance is available because of discrimination. It could therefore be unlawful under FHA to refuse to sell insurance, vary the terms or conditions under which a policy is made available, establish different qualifications or requirements, offer different services, utilize different sales and marketing practices, or otherwise make insurance or insurance related services unavailable or to make them available on different terms because of race, color, religion, sex, handicap, familial status, or national origin.

State laws not substantially equivalent to the Act generally are not as comprehensive as the Federal Fair Housing Act in addressing the breadth of discriminatory housing practices. This is evidenced in the case of property insurance discrimination by the paucity of cases relying on State laws to redress discrimination claims. The victims of discrimination have relied instead on the Federal law.

For example, when Senator Feingold asked James Hall, one of the lead attorneys for the plaintiffs in the *American Family* case, why they chose to pursue the case under the Fair Housing Act rather than Wisconsin State laws, he emphasized the following points: (1) the superior range of remedies obtainable under the Fair Housing Act; (2) ambiguity as to whether or not State law provided for a private cause of action; and (3) for insurers, like *American Family*, that operate in more than one State, the convenience and cost effectiveness of utilizing a Federal law rather than each of several State laws. (*Congressional Record—Senate*, September 27, 1995, S. 14363).

Q.6. Ms. Julian, what is the interrelation of the Fair Housing Act with regard to the Right of Free Speech under the First Amendment. In particular, HUD continues to investigate and threaten individuals with violations under the Fair Housing Act who, for example, protest the development of drug rehabilitation halfway houses in their neighborhoods. Is this an appropriate use of the Fair Housing Act? Please describe current policy and please identify all outstanding Fair Housing cases with a First Amendment nexus and the circumstances of each case?

A.6. I must respectfully disagree that "HUD continues to investigate and threaten individuals with violations under the Fair Housing Act who protest the development of drug rehabilitation halfway houses in their neighborhoods." The Department's policy is set out in the Guidance issued on September 2, 1994, which is attached (Attachment "B"). I have been assured by the Office of General Counsel that this guidance is both consistent with case law, and where policy options exist under the law, errs on the side of protection of the First Amendment.

Under the guidance issued in September of 1994, any fair housing complaint which appears to involve allegations that First Amendment protected activities comes to Headquarters for analysis and decision as to whether the complaint should be accepted for filing, and provides other provisions which direct how investigation should proceed to insure First Amendment rights are not "chilled." That practice will continue.

I have also directed the Office of Investigations to conduct regular training on the First Amendment guidance to insure that cases are properly identified and handled at the intake level. In addition, I intend to emphasize supervisor accountability in the field, and to take appropriate personnel action to insure that my expectations in this regard will be met. If, after all the precautions and training, a complaint is incorrectly accepted or investigated, I will act immediately upon it coming to my attention to stop an inappropriate action, and so advise the parties.

Since the issuance of the guidance HUD FHEO has reviewed approximately 45 cases which appeared to have some First Amendment issues raised. To the extent that, upon review, there was a First Amendment nexus, those complaints or portions of complaints against individuals were not accepted for filing, or dismissed. Of course, one can never prevent someone from raising a First Amendment defense in a case, but I believe that proper implementation of our guidance will insure that cases which are pursued are prop-

erly filed and investigated under the Fair Housing Act and the Constitution.

Attached is a copy of the Charge of Discrimination issued in two cases which are being litigated by the Department of Justice which have been characterized in the media as having a First Amendment nexus. They were both filed and investigated by FHEO prior to the issuance of the guidance. However, as you can also see, they both have facts that are colorable under the Fair Housing Act independent of protected First Amendment activity. Complaints are now being screened-carefully to insure that HUD accepts for filing only complaints which on their face allege conduct which would, if proved, be a violation of the Act. Based on inquiries to the Department of Justice Civil Rights Division, and a review of cases charged and pending action before an Administrative Law Judge, I don't believe there are other cases pending which have the First Amendment nexus. There are four complaints which are pending review which may involve First Amendment issues, but those reviews have not been completed.

I am committed to the principles and protections of the First Amendment, and I will do all that I can to ensure that HUD's actions in enforcing the Fair Housing Act are consistent with that commitment. I think the law as developed under Supreme Court precedent and related case law is the appropriate basis for that policy, and I will adhere to it.

Q.7.a. Do the Fair Housing Act and Section 1325 of FHEFSSA impose different obligations on the GSE's? If so, how do these obligations differ?

A.7.a. The Fair Housing Act, as amended, and implementing regulations promulgated in 1989, apply to GSE's and include a prohibition against discrimination in the purchasing of loans, as well as set forth the business necessity defense to a disparate impact claim involving the purchasing of loans. 24 C.F.R. § 100.125.

In the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), Congress established obligations for the federally chartered, secondary market GSE's that are similar to those required by the Fair Housing Act. Section 1325 of FHEFSSA, for example, requires HUD to prohibit the GSE's from discriminating "in any manner"—including a prohibition on the consideration of the age or location of a dwelling or neighborhood in a manner which has a "discriminatory effect." The Fair Housing Act also prohibits consideration of factors which may have a discriminatory effect.

Congress established additional obligations for the GSE's in FHEFSSA. Section 1325 also:

- Mandates that the GSE's annually assess their underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures to determine whether such policies may yield disparate results based on the race of the borrower. The Fair Housing Act has no similar requirement for any other mortgage market participant.
- Requires HUD periodically to review and comment on the underwriting and appraisal guidelines of each GSE to ensure that such guidelines are consistent with the Fair Housing Act and the

FHEFSSA. The Fair Housing Act does not require a similar review by HUD of any other mortgage market participant.

Q.7.b. Will the prospective Fair Housing regulations and the GSE proposed regulations be consistent in their application to GSE's? How can this be assured?

A.7.b. Any regulations issued by HUD are and will remain consistent in their application to GSE's and other parties. GSE rules will, of course, be responsive to the Congressional mandate requiring HUD to issue them, just as the 1989 Fair Housing Act rules apply the Fair Housing Act as required by Congress. Consistency will result in part from the similarity in statutory requirements, as described above. Consistency and fairness in their regulatory implementation will be assured by a process that includes consideration of comments received on the proposed GSE regulation from all interested parties, review by all relevant Federal agencies, including the Federal financial regulators, oversight by OMB, and congressional oversight and input. This process is aided by the activities of the Interagency Task Force on Fair Lending, which has been working hard to assure uniformity and consistency in the application of the Fair Housing Act and ECOA to all lending activities.

Q.7.c. A recent court case by the Tenth Circuit Court of Appeals, (*Mountain Side Mobile Estates*) rejected HUD's analysis of how the disparate impact theory should be applied in Fair Housing cases. However, the proposed GSE regulations utilize, in part, a disparate impact analysis. To what extent should IWD be issuing disparate impact regulations when its legal analysis is undergoing judicial review?

A.7.c. In *Mountain Side*, the 10th Circuit ruled that disparate impact (or discriminatory effects) does apply to fair housing, but that HUD had incorrectly applied the disparate impact analysis to the facts of the *Mountain Side* case. Every one of the nine additional U.S. Circuit Courts of Appeals that have considered the issue have ruled in favor of applying disparate impact analysis to fair housing cases. This clear legal authority in the fair housing context is paralleled by case law and by the Civil Rights Act of 1991, enacted by a bipartisan Congress, applying disparate impact to employment discrimination. The Department will follow these legal precedents in applying disparate impact theory in its enforcement activities.

While I initially supported additional rulemaking in this area, I am reconsidering the need for such a rule at this time, and I will reserve judgment until the issue is thoroughly explored with legal counsel here in the Department. Any regulation drafted by the Department would be intended only to govern the Secretary in reviewing administrative law judge decisions, as he is required to do by law, and to guide the Assistant Secretary in making reasonable cause determinations, also required by law, after reviewing the results of individual complaint investigations. I am committed to ensuring that any HUD guidance, should it appear appropriate and necessary to issue such guidance, conforms to prevailing legal precedent.

Q.8. Ms. Julian, please describe the best approach to provide a smooth transition of the fair housing functions from HUD to the

Department of Justice. Please describe (and provide recommendations) on any issues that should be addressed as part of this transfer of HUD's fair housing functions to Justice, including capacity issues.

A.8. Assuming that this provision becomes law, I think the best approach would be to have all the affected parties come to a clear and agreed upon understanding of all the required changes and consequences, both intended and unintended, of transferring the functions of the Secretary under the Fair Housing Act to the Justice Department.

I believe the transition must occur in a way which insures that there is no disruption in the processing of complaints. One of the concerns I and others have is that this proposal would disrupt for a considerable period of time effective enforcement of people's rights under the Fair Housing Act, by creating confusion and delay that would seem inherent in such a drastic change.

In addition, the FHA function involves more than the Title VIII complaint processing role and I do not think that the Department of Justice is equipped to take on all of those roles. For example, I think it does not make sense to have the Department of Justice engaging in the function laid out for the Secretary in Sec. 809 regarding education and voluntary compliance activities with the housing industry. This could be retained as part of the Secretary's continuing role under the various Executive Order's and other civil rights statutes for which the Department has responsibility.

The current system depends upon the use of Administrative Law Judges to handle the cases that opt to stay in the administrative process. In addition to transferring the Fair Housing Act functions to Justice, the ALJ mechanism would need to be addressed as well.

I am not in a position to know in detail what exactly will be required by the Department of Justice to effectuate this change, including any statutory provisions and authority that might be indirectly affected, but that should be clarified at the outset, and dealt with upfront.

As I am sure you realize, a great deal of work would need to be done to truly answer this question thoroughly, work that I assume will be done over the next 18 months if this provision is contained in the final bill. However, I think on the capacity issue, Congress will need to confront the fact that increasingly limited resources make it more and more difficult to effectively fulfill the mandate of the Fair Housing Act regardless of where the function resides. The Department's work to assess and improve the Title VIII process should provide useful information on the question of what is an adequate work force to comply fully with the Congressional mandate under the Fair Housing Act.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM KEVIN G. CHAVERS

Q.1. Mr. Chavers, as President of Ginnie Mae, what will your priorities be for ensuring this important corporation fulfills its vital mission?

A.1. My priorities for Ginnie Mae over the next 12 months are essentially four fold:

(1) The completion of the Business Process Reengineering effort. This will entail the full implementation of various process improvements designed to employ technology to enhance efficiencies and make the organization more customer service driven. This will also require the completion and evaluation of the concomitant reorganization;

(2) The continued development and refinement of the multiclass program in order to enhance marketplace acceptance through market education and the continued offerings of products responsive to the marketplace which offer no undue risk to Ginnie Mae or the public yet fulfill Ginnie Mae's Mission;

(3) The elimination of any remaining reportable management conditions; and

(4) Ensuring that Ginnie Mae remain the premier secondary market outlet for federally-insured loans in order to expand home ownership opportunities for low- and moderate-income families, minorities, and first-time home buyers. I will attempt to accomplish this task through product development and refinement and through enhanced synergies with FHA and VA.

Q.2. There have been some proposals for the re-engineering of HUD which would merge Ginnie Mae into a new corporate FHA. What are the advantages of the current structure? What would be the advantages of the change?

A.2. The current structural relationship between Ginnie Mae and FHA has proven effective over the years. Ginnie Mae and FHA have operated under separate corporate and organizational structures, since the creation of Ginnie Mae on September 1, 1968, when Fannie Mae, which was then a Government agency, was partitioned into two parts: Fannie Mae as a privately-owned corporation and Ginnie Mae, a new Government agency within HUD. Since then, Ginnie Mae and FHA have operated in strategic alliance to become the model for implementing national housing policy. FHA's single-family mortgage insurance programs encourage the flow of funds into the housing markets. By guaranteeing the repayment of loan proceeds, FHA's programs enable home buyers to obtain low downpayment mortgage financing at reasonable interest rates and with flexible underwriting. Lenders are able to make mortgage loans not otherwise possible.

Virtually all of FHA/VA loans are furnished to institutional investors under the Ginnie Mae MBS program. Lenders would be less inclined to originate FHA/VA credit-enhanced loans if they did not have the capability of aggregating these loans and selling them in bulk in the capital markets, as they currently do under this program, and, as such, Ginnie Mae represents FHA's and VA's product delivery mechanism, which provides lenders access to the secondary mortgage and capital markets, ultimately lowering the cost of borrowing to home buyers.

The Ginnie Mae MBS, explicitly guaranteed by the United States, is structured to provide this access at the lowest cost by enhancing liquidity to the lenders, thereby allowing them to increase their lending capacity to the targeted underserved sectors of the U.S. housing market. Ginnie Mae has originated more than \$1 tril-

lion in mortgage-backed securities over the history of the Ginnie Mae program.

Thorough research into the question of merging Ginnie Mae into FHA is essential before any steps are taken; however, I am concerned as to the effectiveness of merging Ginnie Mae into FHA for the following reasons:

- (1) Increasingly, the secondary capital markets are shaping the strategy and design in connection with primary mortgage products;
- (2) Ginnie Mae is the name recognized in the global capital markets as the original pass-through MBS, not FHA;
- (3) Because virtually all of FHA-insured loans are securitized under the Ginnie Mae MBS program, FHA is dependent upon Ginnie to provide access to the global capital markets and provide liquidity to lenders, without which lenders would be significantly less inclined to originate loans under FHA's basic insurance program;
- (4) Only Ginnie Mae has the full faith and credit of the United States to accomplish its public purpose.
- (5) The Ginnie Mae capital base should remain distinct from the FHA insurance funds.

However, there may be some advantages to exploring merger opportunities which include the following:

- (1) Ginnie Mae has significant capital to fund a new reinvented enterprise;
- (2) Ginnie Mae has a pre-existing corporate legal structure;
- (3) Ginnie Mae's structure as a public/private partnership represents a template for a reinvented Government; and
- (4) Ginnie Mae has the legal capability to perhaps provide assistance to multifamily and single-family asset portfolio issues.

The exact nature of such a merger must be explored more thoroughly.

Q.3. In your testimony you stated that if confirmed you will continue to pursue additional process improvements for Ginnie Mae. I'd like some specific examples.

A.3. Ginnie Mae's business process redesign (BPR) effort is a constant process. Ginnie Mae operates in a dynamic industry and to be responsive to the industry we must be proactive in the maintenance of our programs. We have identified numerous Opportunities for Improvement and from those, other opportunities have developed. Some specific examples of the additional process improvements to which I referred in my testimony include:

- (1) The institution of automatic Ginnie Mae approval for lenders that are currently in good standing with FHA and either Fannie Mae or Freddie Mac or neither. This opportunity will lead to quicker application processing for lenders that meet the described parameters. Under the new application process the processing time for an "approval entity" will be approximately two weeks.

- (2) The development of a joint FHA/Ginnie Mae application and review process. This is a special application process for lenders who seek FHA approval and simultaneously seek Ginnie Mae approval. It is anticipated that this change will eliminate the approval period

for companies wishing to participate in both programs from up to 6 months to as quickly as 4 to 6 weeks.

(3) The creation of Account Executive Teams. This concept is modeled after a best practices survey of the industry. The account executive concept is designed to provide issuers with one contact to answer all questions and provide all required assistance. The account executive is responsible for the issuer from entrance in the program to termination or default.

(4) The launching of a customer satisfaction survey. This was originally a part of the Opportunities for improvement of the BPR and in response to Executive Order 12862 to survey Ginnie Mae's customers to determine the kind and quality of services customers want and the level of satisfaction with existing services. This information will be used to set customer service standards for Ginnie Mae and identify additional opportunities.

(5) The streamlining of the certification requirements to identify changes that would reduce burdens on issuers without substantially increasing risks Ginnie Mae or investors. The recommended changes to the initial certification process include: (1) the reduction of notarized signatures on certain pool documents; (2) the elimination of maintaining duplicate original forms; (3) the elimination of assignments to Ginnie Mae in recordable form but unrecorded; and (4) the combination of two forms. These recommended changes will significantly reduce time, labor, cost, and paper involved with the initial certification process without drastically adding to Ginnie Mae's risk profile.

The enhancements currently under consideration to enhance the final certification process rely on the technological advances of our program. For example, the approval of electronic signatures and pool submissions through an all electronic submission will advance the opportunity for custodians to certify pools electronically. Through the technological advances that the mortgage banking industry is making, the speed of transactions is becoming more crucial to staying competitive.

In addition, to the improvements previously mentioned the deployment of technology will provide for the following process improvements.

(1) The institution of an all electronic pool submission environment through GinnieNET. GinnieNET is our electronic pool submission system that is being enhanced to streamline the pool submission process. In the very near future we hope to institute an all electronic environment. The benefits include a paperless environment, accurate pool submissions and the potential for reducing the pool processing time. All of these benefits save the issuer community money by saving them time.

(2) The reduction in pool processing time. With the electronic pool submission process in place, Ginnie Mae plans to further reduce the processing time of all mortgage-backed securities (MBS) pools. The reduction will allow more time for issuers to assemble pools and further reduces issuer carrying costs prior to the issuance of the MBS.

The improvements that I mentioned and the improvements to come reflect our recognition of the need to adapt to a changing en-

vironment which specifically affects: (1) Changing business needs; (2) Technology concerns and opportunities; and (3) Limited staffing resources, all of which directly affect Ginnie Mae's ability to accomplish its mission.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM KEVIN G. CHAVERS

Q.1.a. The Administration and others are proposing major changes in the FHA Single Family Mortgage Insurance. What are your views of the various proposals—risk-sharing, reductions in the amount insured by FHA to an amount less than 100 percent, increased targeting to low- and moderate-income residents, privatization of FHA, and/or the conversion of FHA to a Federal Housing Corporation?

A.1.a. While there are many proposals for various changes in the FHA single-family Mortgage Insurance program I believe that the current 100 percent loan by loan insurance has proven to be a stable and indeed profitable cornerstone of the national housing policy designed to promote home ownership. Indeed, it has been vital to the stability and success of the Ginnie Mae program and it offers the lowest cost of home ownership to targeted markets.

However, I do believe that many of the current proposals offer opportunities for additional products and flexibility which would be useful tools for FHA. I will attempt to address each of these issues in turn.

RISK SHARING

The new Government-owned Federal Housing Corporation proposed by the Administration has included within its legislative template an approach which, where prudent and feasible, will rely upon private and other public partners and business participants in different capacities. One type of partnership will be risk-sharing arrangements, under which the FHC will share the risk of default with another well-capitalized institution.

It is my understanding that the stated objectives of risk-sharing are to (a) utilize the private sector's more effective systems of delivery of mortgage products, (b) free up resources to serve undeserved borrowers, (c) provide incentive for conventional lender to go into FHA's market, and (d) remove credit risk for the books of the Federal Government.

As of this date, the specific structure of the risk-sharing products have not been identified. Structural elements have not been defined. Because these characteristics have yet to be defined, the exact nature and extent of participation of Ginnie Mae in a risk-sharing program remains undetermined. However, an appropriate secondary market outlet through Ginnie Mae seems appropriate.

REDUCTION IN THE AMOUNT INSURED BY FHA TO AN AMOUNT LESS THAN 100 PERCENT

If the amount of FHA mortgage insurance is reduced to an amount less than 100 percent, there would be a likely loss of market share by FHA, because mortgage lenders would be reluctant to take on the additional credit risk.

In order to compensate themselves for the added credit risk burden, under this approach, lenders will probably increase the cost of borrowing to home buyers, as well increase underwriting standards and eligibility requirements. This will likely decrease the number of eligible first-time and minority home buyers. Empirical data support this conclusion. The HMDA data indicates a reliance of minority borrowers on Government-backed forms of mortgage credit. To the extent that mortgage lenders increase underwriting and eligibility requirements in response to a significant allocation of the risk to them, the universe of eligible home buyers will likely decrease, which may have a disproportionate impact on first-time and minority home buyers.

In terms of access to capital markets and liquidity enhancement to mortgage lenders, Ginnie Mae's ability to guarantee this product would be potentially constrained by restrictions its ability to guarantee only the portion of the mortgage insured by FHA. There will be servicing and trading ramifications, all of which will translate into added cost to the home buyer. If Ginnie Mae securities guarantee the entire loan, there will be risk-management issues, and if Ginnie Mae securities guarantee only the portion insured by FHA, security structuring issues will have to be addressed. These issues can be managed but they will require some attention and resources.

INCREASED TARGETING TO LOW AND MODERATE INCOME

If the FHA is required to focus even more on the low-moderate market sector in lieu of their current market stratification, the economic viability of FHA's insurance funds could be jeopardized, because of the decreased capability of subsidizing lower quality loans with relatively high quality loans. The FHA generally charges customers the same insurance premium regardless of risk while PMI companies price based on risk. In this connection, the FHA uses cross subsidization to fulfill its public mission. Since the MMI Fund must be actuarially sound, retargeting will result in higher insurance premiums, potentially undermining the FHA's ability to promote home ownership for targeted markets.

Retargeting proposals will reduce home ownership and market stability. Retargeting proposals condense FHA's potential customer base. Further restrictions on FHA's base limits its ability to assist the full spectrum of FHA's current borrowers. The FHA would find it more difficult to promote home ownership opportunities among first-time home buyers and those with lower incomes. Retargeting will also limit FHA's ability to respond when the private industry abandons distressed housing markets.

The retargeting proposals are particularly perplexing considering the MMI Fund's relatively good financial health. The MMI Fund now exceeds its Congressionally mandated capital ratio and is projected to surpass the ratio established for the year 2000.

PRIVATIZATION OF FHA

Assuming that the privation of FHA would entail (a) loss of the full, faith and credit backing of the United States (expressed and implied), and (b) conversion to private ownership, the following could occur:

- There would be an immediate requirement for significant capitalization in order for FHA to become creditworthy on a self sustaining basis;
- FHA would be required to do less risky business because of its obligations to provide a return on equity for stockholders;
- Insurance premiums might increase in order to achieve a level of profitability in order to attract the appropriate amount and structure of equity capital;
- The cost of home ownership would likely increase for certain market sectors;
- The scope of eligible borrowers would decrease;
- Undeserved and unserved markets will increase;
- In times of economic uncertainty, mortgage liquidity in certain market segments would be severely constrained. FHA played a significant role in stabilizing housing markets in the 1980's. The early-to-mid 1980's was a difficult period for both FHA and the private mortgage insurance industry, which retrenched from distressed housing markets in the 1980's, and FHA stepped in and played a major role to ensure a continuity of coverage.
- Homebuying opportunities for first-time home buyers, minorities and low-moderate income individuals would likely be significantly reduced.

In summary, proposals that would privatize the FHA do not account for the critical distinctions between the operations of public and private-sector enterprises. Privatization would make it difficult for the FHA to continue to serve certain markets thereby crippling its ability to promote home ownership among lower-income households and first-time home buyers and stabilizing distressed housing markets.

As a private entity, FHA would have to be responsive to the needs of its shareholders. In this new environment, FHA would have to abandon its policy of supporting certain borrowers in favor of policy where customers are segmented according to risk. As opposed to a relatively flat premium structure, the FHA would be forced to price according to perceived customer risk. Furthermore, the FHA would have to develop mechanisms of steering away from declining housing markets.

The FHA currently is able to leverage its Federal backing to promote its public mission. As a private entity, the FHA could find it more difficult to maintain its existing level of operations with its current capital base. As a privatized entity the FHA's market presence likely would be considerably smaller.

CONVERSION OF FHA TO A FEDERAL HOUSING CORPORATION

The principal aspects of the proposed conversion of FHA to the Federal Housing Corporation focus on the following areas:

- Accountability
- Operational Efficiency and Flexibility
- Portfolio Management
- Safety and Soundness Regulation
- Portfolio Management Reforms

These are all important and necessary tools to effectively manage a going concern in today's complex and rapidly moving mortgage

markets. Such enhanced abilities would allow the FHC to manage risks more prudently and expand its service to underserved markets.

Q.1.b. What effect have these proposals had on the trading of Ginnie Mae securities?

A.1.b. The overall impact of the various proposed changes on the trading of Ginnie Mae securities would be most dramatic if the Capital Markets believe there will be an adverse impact on Ginnie Mae's ability to continue producing high quality mortgage-backed securities. Wall Street and the global institutional investment community have become familiar with the nature of current Ginnie Mae securities.

If the institutional investment community believes that there will be a reduction or elimination of Ginnie Mae, and its ability to create Ginnie MBS, prices of the existing Ginnie Mae MBS would likely rise, as investors will bid up the prices for what would certainly become a limited supply of Ginnie Mae MBS. An example of this is the sharp increase in Ginnie Mae MBS prices in late January, 1995, when it was rumored that Ginnie Mae was to be eliminated. The price/yield spread moved approximately nine basis points in a one week period.

This uncertainty usually has a negative impact on the price performance of Ginnie Mae MBS. However, the uncertainty which currently exists as to the final outcome of the various proposals, risk sharing, reduction in the amount of the FHA insurance, privatization, etc. has had a negligible effect on Ginnie Mae MBS prices. This is due to the uncertainty surrounding the outcome of proposals that are still being developed and negotiated. As these various proposals become crystallized, their specifics will be scrutinized and evaluated more precisely by institutional investors as they determine how the actual composition of these programs will directly impact them.

Q.2.a. In the 1993 Budget Reconciliation Act, the Committee enacted a provision to allow Ginnie Mae to issue multiclass securities or REMIC's. Your questionnaire indicates that you have been involved in the implementation of this program. How has the implementation gone?

A.2.a. The implementation of the GNMA REMIC Program began with a pricing of the first GNMA REMIC in May of 1994 during the initial stage. The full participation stage of the GNMA REMIC program began in July of 1994. The implementation of the REMIC program went according to plan taking into consideration the procedures, internal controls, and documentation necessary to ensure a successful program. We have been able to operate the GNMA REMIC and GNMA Platinum Programs in an effective and efficient manner.

The GNMA Platinum Program is part of GNMA's Multiclass Securities Program. Through the GNMA Platinum Program, a person who holds a number of GNMA Certificates may deposit these Certificates into a GNMA Platinum Series Trust. In exchange for the GNMA Certificates, the GNMA Platinum Series Trust Fund is Comprised of "fully modified pass-through" mortgage-backed certificates as to which Ginnie Mae has guaranteed to timely payment

of principal and interest pursuant to GNMA I and GNMA II Program.

The GNMA Multiclass Securities Program has been well received by the Wall Street sponsors, investors, and the mortgage banking community.

Q.2.b. How many REMIC deals have been issued?

A.2.b. To date there have been 15 REMIC deals priced and 14 deals issued with another issuance scheduled for the end of this month.

Q.2.c. Why have the proceeds from this new program fallen short of those projected in the budget process?

A.2.c. First, the volatility in interest rates has significantly decreased the volume of mortgages and mortgage-backed securities eligible for REMIC's. Second, the market for REMIC's has declined significantly during Fiscal Year 1995. Very few REMIC deals have been brought to market by Ginnie Mae, the Government-Sponsored Enterprises or private label issuers. This is due to many factors including the lack of arbitrage spreads between the underlying Mortgage-Backed Securities and the proposed REMIC transactions, lower demand by banks and savings and loans in these securities for investment purposes and the general concern held by some investors relating to the liquidity of REMIC Securities.

In addition, there is competition between Ginnie Mae and the Government-Sponsored Enterprises for the issuance of REMIC's backed by Ginnie Mae Mortgage-Backed Securities. This has caused the fees charged for such transactions to decline significantly. The combination of the above factors—fewer deals with lower fees—has caused a major decrease in Ginnie Mae's expected earning from REMIC's.

Q.3.a. Reports by the Inspector General (IG) and the General Accounting Office (GAO) have raised concerns about the small number of Ginnie Mae staff to monitor the work of hundreds of contractors. How many employees does GNMA currently have? How many contracts do they oversee? How many people work for these contractors?

A.3.a. In FY 1995, Ginnie Mae's full time employee usage rate was 65.7. Ginnie Mae had 36 major active contracts as of September 30, 1995. The contractors have an estimated 672 employees assigned to Ginnie Mae tasks/assignments.

Q.3.b. How have these numbers changed over the last 2 years? What has GNMA done in response to the IG/GAO's concerns?

A.3.b. In FY 1994 Ginnie Mae's full-time employee usage rate was 65.8 with 24 active contracts providing services. Ginnie Mae estimates that contractor employees assigned to Ginnie Mae tasks for FY 1994 were 593, 79 fewer than in FY 1995.

In fiscal year 1994 for the first time in its history Ginnie Mae hired a full-time senior contract specialist to administer proper procurement compliance. In addition, during the fiscal year Ginnie Mae conducted a thorough review of its business processes through Business Process Reengineering (BPR) effort. We analyzed and determined optimum workflows and organizational structure. Ginnie

Mae adopted numerous process opportunities for improvement and established improvement teams to implement the new processes.

Further, efficiency achieved as a result of the BPR has created additional staffing flexibility that enhances Ginnie Mae's ability to monitor the work of its contractors. In addition we use auditors to audit all of our contractors.

Q.4. What are your priorities for GNMA over the next 12 months?

A.4. My priorities for Ginnie Mae over the next 12 months are essentially four fold:

(1) The completion of the Business Process Reengineering effort. This will entail the full implementation of various process improvements designed to employ technology to enhance efficiencies and make the organization more customer service driven. This will also require the completion and evaluation of the concomitant reorganization;

(2) The continued development and refinement of the multiclass program in order to enhance marketplace acceptance through market education and the continued offerings of products responsive to the marketplace which offer no undue risk to Ginnie Mae or the public yet fulfill Ginnie Mae's Mission;

(3) The elimination of any remaining reportable management conditions; and

(4) Ensuring that Ginnie Mae remain the premier secondary market outlet for federally-insured loans in order to expand home ownership opportunities for low- and moderate-income families, minorities, and first-time home buyers. I will attempt to accomplish this task through product development and refinement and through enhanced synergies with FHA and VA.

Q.5. What is the vision for the future of GNMA? What should it look like 5 years from now?

A.5. GNMA represents a model template for Government reinvention as the very paradigm of public/private partnership. As a Federal entity that's on budget for salaries and expenses, GNMA has had to be an efficient operation with a staffing level that has ranged from 60 to 70 Federal employees. In lieu of high staffing levels, Ginnie Mae professionals supervise contractors to assure that the Mortgage-Backed Securities and Multiclass Securities programs function to assure liquidity in the housing markets for FHA and VA credit-enhanced loan products.

My vision for the future of Ginnie Mae, includes achievement of the following objectives:

(1) Enhancement of Ginnie Mae's strategic alliance with FHA, VA, and FmHA which has provided the most cost effective and efficient secondary market vehicle available to lenders to expand home ownership opportunities for the targeted and undeserved segments of the U.S. housing market. I feel there is a vital need to enhance the synergies between FHA (as well as, perhaps, FmHA and VA) and GNMA's in order to coordinate the entire linkage of mortgage product delivery to the underserved home buying market, with secondary and capital markets vehicles, which create liquidity and ultimately reduce the cost of home buying.

Greater coordination between Ginnie Mae, FHA, and VA will afford an efficient and cost-effective mechanism for delivering mortgage credit and capital to the undeserved sectors of the U.S. housing market.

(2) Expansion of the MBS and Multiclass Securities programs with the introduction of new products which provide liquidity to mortgage lenders, and as a result reduce the cost of home buying to targeted sectors of the U.S. housing market.

Five years from now Ginnie Mae should be the preeminent secondary market outlet directed toward a public mission which is responsive to the market in real time and operates in an efficient, customer service driven manner while providing revenue to the Treasury.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM KEVIN G. CHAVERS

Q.1. Last month, in a meeting with leaders of the manufactured housing industry, Secretary Cisneros pledged that HUD and the FHA commissioner would pay "special attention" to improving HUD's manufactured home loan insurance program. Although some improvements have been made to that program by FHA, HUD realizes that further improvements could make manufactured housing a more available source of affordable housing and home ownership opportunity. Relatedly, for several years GNMA has had in place a moratorium barring the approval of new manufactured home loan mortgage-backed securities issuers. As President of GNMA, will you work actively with the FHA to make necessary improvements in the manufactured home loan program? If yes, will you then support lifting the GNMA moratorium on new manufactured home loan mortgage-backed securities issuers?

A.1. As President of Ginnie Mae I would work with FHA to make improvements in the manufactured home loan program. I recognize the important role manufactured housing plays as part of our Nation's affordable housing strategy, particularly in many of our Nation's rural communities. However, it is important that a workable program be developed which does not subject the Government to undue credit risk and subsequent losses.

Unfortunately, losses have plagued Ginnie Mae's historical experience with the *current* manufactured housing program. This experience has partially been a result of the major differences between the manufactured and single-family programs. These differences are as follows:

(a) As with other forms of chattel or personal property, (unlike real property) manufactured housing unit depreciates in value immediately. This results in higher default rates and in larger losses subsequent to default.

(b) In the manufactured housing program, FHA often denies a claim subsequent to default because of some irregularity that occurred at origination or during the servicing and repossession of the unit. When a claim is paid, FHA also has the ability to request the proceeds be returned once they have had the opportunity to review the claim. In the single-family program, once the loan is endorsed, a claim is virtually assured.

(c) FHA's program is a coinsurance program. Only 90 percent of the FHA calculated loss is paid. FHA's single-family program is 100 percent insurance.

(d) In order to receive maximum claim proceeds, the price received for the repossessed unit must equal or exceed the FHA or VA appraisal. Historically, about two-thirds of Ginnie Mae losses have resulted from sales proceeds failing to meet appraisals. The difference between appraisals and proceeds is a loss to the issuer. In the single-family program, the loan is assigned to FHA and a claim covering all but a small portion of the loss is paid.

Given the fiduciary responsibility of the Ginnie Mae President to the Ginnie Mae trust account, I could only support lifting the moratorium once we have redesigned a program with appropriate safeguards and pricing to protect Ginnie Mae and the taxpayers from undue losses.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM JOSEPH H. NEELY

Q.1. *RTC Takeover*—The RTC is closing down at the end of this year and will be folded into the FDIC. What challenges do you expect from the transition and merger of the two agencies?

A.1. The transition and merger of two large agencies, such as the FDIC and the RTC, is a complex effort that will create several challenges. The challenges are very similar to those facing a financial institution which acquires another through purchase or merger in the private sector.

The greatest challenge will be to ensure that the transition takes place with a minimum of disruption to the FDIC and its customers. The important functions of the FDIC must continue during the transition, and making sure that necessary work gets done while avoiding having anything fall through the cracks will be difficult. It is essential that existing policies, procedures, and operations of the RTC are evaluated and compared to those of the FDIC to promote the greater efficiency and effectiveness of the resulting institution.

Another challenge for the FDIC will be to retain quality staff through the transition period. In particular, it will be important to make RTC personnel returning to the FDIC feel that they are "a part of the team" throughout and after the transition. It will also be difficult to ensure that the uncertainty surrounding personnel issues during the transition does not dilute the pool of experienced talent at the FDIC. Although banks are enjoying record profits, the business cycle will inevitably turn and the FDIC will need to be prepared to meet its obligations with experienced personnel when that happens. The success of this transition is contingent upon a concerted effort from everyone at the FDIC.

Q.2. *FDIC Downsizing*—As part of the transition, the FDIC faces the difficult task of downsizing. What private sector expertise can you contribute toward making these decisions?

A.2. There is no easy way in either the private or the public sector to downsize an organization. In the private sector, downsizing strategy is generally driven by market forces and profit objectives. The challenge is to achieve maximum efficiency and economy with-

out the sacrifice of service, responsiveness, and productivity. There is no reason that the same general principles cannot be applied in a public sector environment.

As mentioned above, downsizing to core staffing levels and reducing related expenses must be accomplished without sacrificing essential levels of expertise and experience. For example, in the supervisory area, it is tempting to drastically reduce staff given the current condition and health of the industry. This may greatly reduce the number of seasoned, veteran supervisory personnel who have witnessed more difficult industry conditions, leaving a core supervisory staff that has examined institutions only in a healthy environment. Thus, when conditions change, the agency could find itself in a precarious position lacking the nucleus of leadership and experience to directly supervise a weakened industry.

In sum, the key to a successful downsizing is careful planning, open communications, and fair treatment. As a member of the FDIC Board of Directors, these goals will guide my decisions about downsizing.

Q.3. Modernization—You have been credited with streamlining Mississippi's banking laws and modernizing its banking department. What ideas do you have for modernizing and improving the FDIC's operations?

A.3. I think there is a great deal to be learned from the American public, the FDIC field examiner, and the grass roots level of the industry, all who rarely feel that their voice is heard. Coming to the Mississippi department from the private sector, I have tried to remember whose interest I was charged to serve. With that mandate, I have evaluated the operations of the department as well as the guiding statutory framework to see if both allowed us to operate efficiently and to offer the most protection to the public interest.

My private sector experience was most beneficial in implementing new programs. But most of all, I witnessed the benefit and impact of effective communication throughout the organization. Our staff became significantly more productive when made aware of "why" their job is important rather than simply "how" to do it. All of the programs which I have implemented in Mississippi are the result of communication with the public, the industry, and our staff. In coming to the FDIC, I would first attempt to determine if such communication freely flows between the agency and those it serves as well as within the organization. Better communications will serve to improve the agency and enhance its effectiveness.

I have a number of other ideas for modernizing and improving the FDIC's operations. I believe that the FDIC should focus on future risks to the industry. The focus should be on avoiding potential losses rather than just reacting to them after they are embedded in the institution. This will assist the institutions as well as improving supervision.

I also think that the FDIC can reduce the amount of time that its examiners are actually in an institution. By taking advantage of improved technology and careful planning, the FDIC should be able to perform a number of the aspects of the examination process off-site and reduce the time needed for an examination.

There are also some risks to financial institutions that bear watching. For example, some derivatives activities may not be appropriate for certain institutions. In addition, most examinations do not really focus on an institution's potential liabilities from litigation. By improving the supervision of these activities, the FDIC can work to keep institutions out of trouble—which is much less expensive than paying for them after they fail.

Q.4. BIF/SAIF—As someone with real world experience, how would you, as a banker, react to the merger of BIF/SAIF and the bank and thrift charters.

A.4. The guiding principle in the merger of the BIF and the SAIF or merger of the charters should be the stability of the deposit insurance fund for the protection of the depositor. As a banker, my focus would be on the equity of any merger proposal and the potential exposure to the fund from the merger. If SAIF is satisfactorily capitalized, then the merger of the funds becomes more acceptable as a merger of equals.

However, as a banker, the charter merger issues raise concerns that all similarly chartered institutions enjoy similar powers and compete upon an equal basis. We see many signs of industry merger activity occurring at the State level with common regulations of the banking and thrift industry, uniform regulatory restructuring and conformity, and, in many cases, mergers of the thrift and banking trade associations. The regulatory environment of the last 15 years and market factors have eliminated many of the distinctions that historically existed between these charters. I feel that the remaining perceptual differences exist primarily within the industries and not in the public marketplace.

Q.5. The financial viability of SAIF is very much in question. What do you consider necessary for the insurance funds to be adequate and taxpayer interests to be protected?

A.5. I believe that the SAIF proposal adopted by the Senate Banking Committee will result in a strong deposit insurance fund. The one-time special assessment capitalizes the SAIF immediately. The spreading of the FICO obligation prevents a possible future default. Finally, the merger of the deposit insurance funds strengthens and stabilizes the deposit insurance system.

In addition to the proposal to strengthen the deposit insurance system, I feel that it is very important to retain the risk-based premium system. I believe that the risk-based insurance system was one of the most equitable and progressive developments in the area of deposit insurance.

I also believe that these premiums need to be assessed upon industry risk rather than institutional risk. The 1.25 percent designated reserve ratio is a somewhat arbitrary benchmark. This balance may be excessive during strong industry conditions, yet may be inadequate during weak industry conditions. The risk-based premium not only provides incentive to institutions to maintain a safe posture but also fairly assesses those who do so in times of industry decline. Once both funds are capitalized, proper supervisory monitoring, proper risk assessment and related equitable premium assessments should ensure a strong deposit insurance system in the future.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM JOSEPH H. NEELY

Q.1. The banking industry is enjoying record profits. The Bank Insurance Fund is now at its designated reserve ratio. In fact, the fund had moved above its ratio which led to the recent refund. Looking ahead, what is your view of the outlook for the industry?

A.1. The immediate outlook for the banking industry is very good. Banks continue to enjoy very profitable times. In addition, the reduction in deposit insurance premiums should contribute significantly to the banks' bottom line.

Over the long term, however, banks are facing significant competition from financial service providers who are invading their traditional markets. These competitors frequently operate in a less restrictive regulatory environment than banks which gives them a competitive advantage. Banks may continue to face shrinking markets and a limited ability to respond to competitive pressures.

The average core banking customer today is demanding financial products that would have been considered "exotic" 10 years ago. If banks are to remain competitive, they must be able to expand their service offerings continuously. In the process, however, the risks of new activities must be carefully considered to ensure that the risks do not outweigh the benefits.

Q.2. What challenges do you foresee and what are the prospects for the industry meeting those challenges?

A.2. The main challenge facing the banking industry is to compete with other financial service providers who frequently have a competitive advantage. The prospects for the industry are closely tied to congressional action. If Congress ultimately expands the powers available to banks and takes steps to reduce some of the regulatory burden, the industry will have strong prospects of meeting the challenge. Efforts to expand powers, however, also will create challenges for bank regulators to ensure that any new activities are exercised in a safe and sound manner and do not increase risk to the deposit insurance funds or the taxpayers.

Q.3. The pendulum of lending standards seem to swing over time. There has been some concern that the pendulum was swinging back a bit too far toward easier lending standards. What is your view on the current state of lending standards?

A.3. So far, we have seen very little direct evidence of an easing of lending standards in Mississippi. I feel that most bankers vividly remember the lessons learned from the 1980's. However, bad loans tend to be made in good times and the temptation is strong to take chances. For this reason, we have been placing special emphasis in our examinations on reviewing credit quality. The banking business is cyclical and no institution should be making credit decisions under the assumption that the good times will continue in the future.

Q.4. The FDIC, Federal Reserve Board and Comptroller of the Currency are proposing a regulation that would require banks to set aside a certain amount of capital to reflect the market risk inherent in their trading in derivatives. (This proposed regulation follows a 1993 recommendation of the Basle Committee on Banking

Supervision that requires banks to measure the risk they face from their derivative trading activities.) What is your view of the risks associated with derivatives? What do you think should be the approach in dealing with these risks?

A.4. When used properly and subject to appropriate management oversight, certain derivative products can be an effective part of an institution's overall risk management strategy. To be effective however, it is imperative that the management of institutions involved in derivatives activities engage in active oversight of these activities. Active oversight includes the establishment of controls and risk measurement, monitoring, and reporting requirements that are appropriate to the level and type of activities in which the institution is engaged. From my perspective as a State bank supervisor, I have seen a trend on the part of the management of smaller, community banks to avoid many of these derivatives products in light of the bad publicity and questions posed by stockholders on the risks associated with some products. Small community banks have generally been involved in derivatives activities as end users. It is particularly important that the management, in concert with the board of directors, take an active role in establishing and monitoring policies regarding the use of these products and that they possess an adequate level of understanding of the risks associated with the types of derivatives investments or contracts entered into by their institutions.

Lucille YOUNG, et al., Plaintiffs,
 v.
 Samuel PIERCE, Jr., et al., Defendants.
 Civ. A. No. P-80-8-CA.
 United States District Court,
 E.D. Texas,
 Paris Division.
 July 31, 1985.

Black applicants and residents of public housing in east Texas brought action against Department of Housing and Urban Development, alleging HUD had knowingly maintained, and continued to maintain, system of racially segregated housing in violation of Constitution and laws of United States. Parties cross-moved for summary judgment. The District Court, Justice, Chief Judge, held that: (1) plaintiffs met commonality requirement for class action suit; (2) HUD's funding, regulation and assistance of local public housing authorities constituted clearly unconstitutional support of segregation; (3) relationship between local public housing authorities and HUD was sufficient to give rise to liability on part of HUD; and (4) action was not barred by doctrine of sovereign immunity.

Order accordingly.

1. Federal Civil Procedure \S 186.15

Black applicants and residents of public housing satisfied commonality requirement for class action under Fed. Rules Civ. Proc. Rule 23(a), 28 U.S.C.A., and did not employ improper across-the-board challenge to discriminatory policy, where Department of Housing and Urban Development performed one function, providing public housing, which required varied distinct administrative activities, and applicants and residents challenged result of Department's alleged maintenance of single, uniform policy of knowingly supporting segregated housing in east Texas.

2. Federal Civil Procedure \S 164.5

Class action may proceed despite mootness of named plaintiffs' claims

3. Federal Civil Procedure \Rightarrow 186.15

Allegations that one named plaintiff was atypical representative of class of black applicants and residents in public housing because she was allegedly poor tenant when she lived in segregated housing, and because she did not vigorously seek to obtain housing through local housing authority, that second named plaintiff had credit problem, and that third named plaintiff was atypical representative because she declined to be first black to move into all white project when given chance to do so were inadequate to disturb court's earlier ruling that named plaintiffs claims were typical of those of class they represented, particularly where named plaintiffs had already fairly and adequately protected interest of class by establishing Department of Housing and Urban Development's liability for racially segregated housing.

4. Civil Rights \Rightarrow 3

Any tangible assistance by government to segregation is prohibited by Constitution if it has significant tendency to facilitate, reinforce, and support private discrimination.

5. Civil Rights \Rightarrow 11.5

Department of Housing and Urban Development's funding, regulation, and assistance of local public housing authorities was unconstitutional support of segregation, where HUD allowed local public housing authorities to construct segregated housing projects and selectively enforced its regulations in way calculated to ensure projects remained segregated, abdicated its duty to enforce fair housing plan regulations which theoretically made new construction housing available to minorities, did nothing to monitor or review initial occupancy process of new homes, and HUD's own findings, made before filing of action, revealed that at least 20 of public housing authorities in class action counties were operating in violation of Title VI which prohibits discrimination in federal programs. 42 U.S.C.A. \S 1437f; Civil Rights Act of 1964, \S 601 et seq., 42 U.S.C.A. \S 2000d et seq.

6. Civil Rights \Rightarrow 13.7

Relationship between Department of Housing and Urban Development and local public housing authorities was sufficient to give rise to liability on part of HUD for discrimination in public housing, where decisions which produced racial makeup of public housing were heavily regulated by HUD, HUD had recognized duty under Title VI, which prohibits discrimination in federal programs, to involve itself in those decisions, and HUD funded housing. Civil Rights Act of 1964, \S 601 et seq., 42 U.S.C.A. \S 2000d et seq.

7. Civil Rights \Rightarrow 13.7

To render Department of Housing and Urban Development liable for discrimination in public housing, black residents and applicants for public housing were not required to show HUD supported racial discrimination with discriminatory intent, where government practices involved were not in any sense facially neutral, but rather, HUD supported local housing authorities it knew discriminated.

8. Civil Rights \Rightarrow 11.5

Necessary prerequisite for fulfilling duty on part of Department of Housing and Urban Development to eradicate segregation in public housing was to obtain information about discrimination practice under HUD's auspices.

9. Civil Rights \Rightarrow 11.5

Even if Department of Housing and Urban Development were ignorant of discrimination practiced by local public housing authorities, HUD would have violated Fifth Amendment by willfully ignoring facts necessary to fulfill its constitutional and statutory duties to eradicate, and not perpetuate, segregation through use of public funds. U.S.C.A. Const. Amend. 5; Civil Rights Act of 1964, \S 601 et seq., 42 U.S.C.A. \S 2000d et seq.

10. Civil Rights \Rightarrow 13.13(3)

Department of Housing and Urban Development's intent to discriminate in public housing was established by combination of HUD's assertions of ignorance of where

public funds it distributed were being spent, its actual knowledge of segregation in local public housing, and its financial support at each public housing site which practiced segregation.

11. Civil Rights ⇨11.5

Department of Housing and Urban Development's violation of Fifth Amendment, both through its knowing support of public housing authorities which intentionally discriminated, and through HUD's own acts of intentional discrimination, established HUD's liability under 42 U.S.C.A. §§ 1981, 1982. U.S.C.A. Const.Amend. 5.

12. Civil Rights ⇨11.5

Intentional discrimination violates Title VIII which prohibits discrimination in provision of housing. Civil Rights Act of 1968, § 801 et seq., 42 U.S.C.A. § 3601 et seq.

13. Civil Rights ⇨9.5

Title VI which prohibits discrimination in federal programs imposes duty on Department of Housing and Urban Development to eliminate racial discrimination from programs it funds. Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

14. Civil Rights ⇨11.5

Failure of Department of Housing and Urban Development to eliminate racial discrimination from programs it funded, and in fact, to deliberately nurture discrimination in public housing, as well as engaging in discrimination itself, constituted violation of Title VI, which prohibits discrimination in federal programs. Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

15. Civil Rights ⇨12.4

Black applicants and residents of public housing in east Texas exhausted their administrative remedies prior to bringing suit alleging violation by Department of Housing and Urban Development of Title VI which prohibits discrimination in federally funded programs, where counsel for applicants and residents sent written complaint to HUD in which it stated that HUD supported rental housing in east Texas was

thoroughly racially segregated, that HUD knew of that pattern, that although HUD had taken measures to correct situation, it usually blamed situation on local authorities, landlords, and tenants, and HUD did not institute prompt investigation of allegations.

16. Civil Rights ⇨12.4

Black residents and applicants for public housing in east Texas were not required to exhaust administrative remedies prior to bringing suit alleging violation of Title VI, prohibiting discrimination in federal programs, by Department of Housing and Urban Development, where relief sought was disestablishment of segregated public housing in east Texas, HUD had been apprised of several instances of violation of Title VI regulations but had failed to remedy situation, and HUD's own officials in charge of Title VI review process in east Texas asserted they had no power or authority to seek actual desegregation. Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

17. United States ⇨125(18)

Sovereign immunity does not bar suit to enjoin unconstitutional actions by federal officer.

18. United States ⇨125(28)

Doctrine of sovereign immunity did not bar action alleging and showing that conduct of Department of Housing and Urban Development in funding and monitoring discriminatory public housing violated Fifth Amendment and federal statutes designed to prevent discrimination by federal officers. U.S.C.A. Const.Amend. 5; 5 U.S.C.A. § 702.

19. Civil Rights ⇨13.6

Existence of continuing adverse effects in form of system of segregated public housing conferred upon black residents and applicants for public housing in east Texas standing to bring action seeking injunctive relief prohibiting future violation of Constitution and civil rights statutes. U.S.C.A. Const.Amend. 5; 42 U.S.C.A. §§ 1981, 1982; Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

Civil Rights Act of 1968, § 801 et seq., 42 U.S.C.A. § 3601 et seq.

20. Action ⇐6

Party urging mootness bears heavy burden of demonstrating that discontinuance of challenged activity has destroyed any controversy between parties.

21. Action ⇐6

Institution of plan by Department of Housing and Urban Development to transfer over and underhoused tenants, and to create agenda for further desegregation in public housing, did not render moot action alleging that HUD had knowingly maintained, and continued to maintain, system of racially segregated housing in violation of Constitution and laws of the United States.

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ORDER

JUSTICE, Chief Judge.

Plaintiffs in this class action allege that defendant, the United States Department of Housing and Urban Development ("HUD"), has knowingly maintained, and continues to maintain, a system of racially segregated housing in violation of the Constitution and laws of the United States. Specifically, the plaintiff class asserts that HUD, in funding and overseeing this housing, has discriminated against blacks in violation of the Fifth Amendment to the United States Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in federal programs); Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq. (prohibiting discrimination in the provision of housing); as well as the Civil Rights Act of

1866, 42 U.S.C. §§ 1981 and 1982. The plaintiff class consists of all black applicants for, and residents of, HUD-assisted housing in thirty-six East Texas counties ("the class action counties").¹ Defendant HUD is a federal agency which participates in the provision of public housing throughout the nation. Also named as defendants are HUD's Secretary, and the Administrator of HUD's Region VI, which contains the class counties. HUD does not construct, own, or operate any housing itself. Rather, its role is essentially promotional. Through a number of programs, HUD provides significant financial support, technical assistance, and regulatory oversight for the providers of public housing.

In its submissions to the court, HUD has placed these programs under three major rubrics. First, there are "Low-Rent Public Housing Projects Under Management," that is, the public housing created in the Housing Act of 1937, as amended, 42 U.S.C. § 1437. In this program HUD funds directly a local public housing authority ("PHA"), which constructs and operates housing projects. The second category of HUD-assisted housing is denominated "Insured-Assisted Housing." This consists, first, of two programs through which HUD subsidizes mortgage insurance and interest in order to encourage the construction of low-income housing, §§ 221(d)(3) and 236 of Title II of the National Housing Act of 1934, 12 U.S.C. §§ 1715(d)(3) and 1715z-1. The "assisted" aspect of these projects is their receipt of supplemental rental payments from HUD, pursuant to 12 U.S.C. § 1701s. The last program at issue here consists of "Section 8 New Construction" subsidies. This program provides assistance for families occupying new apartments, Section 8 of Housing and Community Development Act of 1974, 42 U.S.C. § 1437f, by making rental payments to landlords. 24 C.F.R. §§ 880-881.

In the class action counties, the three major programs at issue in this litigation can best be understood as representing

1. These counties are: Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Gregg, Hardin, Harrison, Henderson, Hopkins, Houston, Jasper, Jefferson, Lamar, Liberty,

Marion, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Tyler, Upshur, Van Zandt, and Wood.

periods of HUD activity: until the mid-1960's, HUD created low rent projects almost exclusively; from the late 1960's until the mid-1970's, the chief form of subsidy was "Insured-Assisted Housing"; since the mid-1970's, HUD has mostly been engaged in Section 8 new housing. Charts A-C, Defendants' Motion for Summary Judgment. The Insured-Assisted and Section 8 programs, while administratively distinct, are in many cases mixed in fact. According to HUD, a number of projects have enjoyed both forms of assistance. Memorandum in Support of Defendants' Motion for Summary Judgment at 15.

This action was filed in 1980. The class was certified by this court's order of July 1, 1982. *Young v. Pierce*, 544 F.Supp. 1010 (E.D.Tex.1982). Since that time, the parties have conducted extensive discovery, and have agreed that the issue of liability is ripe for resolution on cross motions for summary judgment. These motions have been extensively briefed, and are accompanied by exhibits and affidavits. Defendants also seek reconsideration of this court's order certifying the class. The question of the class's viability logically precedes that of liability.

Defendants' Motion to Decertify the Class

Defendants argue that the Supreme Court's decision in *General Telephone Co. v. Falcon*, 457 U.S. 147, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1981), calls into question the propriety of the class in this action. Defendants further maintain that factual developments since the certification of the class warrant either decertification of the class or its recertification to include a greatly reduced area.

In *Falcon*, the Supreme Court partially invalidated the "across-the-board" Title VII class action certifications which had previously been allowed by the United States Court of Appeals for the Fifth Circuit. Pursuant to the "across-the-board" doctrine, a Title VII plaintiff seeking to represent a class, against which an employer had allegedly discriminated on sexual or racial grounds, was allowed to challenge "across-the-board" all aspects of the employer's discriminatory policy. *Id.* at 154.

102 S.Ct. at 2368, 72 L.Ed.2d 740, quoted in *Payne v. Travenol Laboratories, Inc.*, 565 F.2d 895 (5th Cir.), cert. denied, 439 U.S. 835, 99 S.Ct. 118, 58 L.Ed.2d 131 (1978); see also *Johnson v. Georgia Highway Express, Inc.*, 417 F.2d 1122, 1123, 1124 (5th Cir.1969). In the *Falcon* opinion, the Supreme Court specifically disapproved the inference, allowable under the "across-the-board" doctrine, that an allegation of discrimination against an individual in one area of employment, such as promotions, indicates that the employer has a general policy of discrimination which is manifested in all other aspects of the employer's business, such as hiring, firing, and pay. The *Falcon* Court treated the "across-the-board" doctrine as an impermissible exception to the commonality and typicality requirements of Fed.R.Civ.P. 23, and reaffirmed that "a Title VII class action, like any other class action, may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *Id.* at 161, 102 S.Ct. at 2372; see also *Vuyanich v. Republic National Bank*, 723 F.2d 1195 (5th Cir. 1984).

Defendants argue that "in *Falcon* the Supreme Court not only rejected the across-the-board rule as applied to Title VII claims in cases such as *Johnson*, it also restated and refined the requirements of Rule 23 as applied to all proposed class actions." Motion to Decertify Class at 4. While it is true that the *Falcon* case restated the requirements of Rule 23—as do many cases dealing with class action certification—, this court is unable to discern any change by the *Falcon* Court of the substantive requirements of Rule 23. See *Carpenter v. Stephen F. Austin State University*, 706 F.2d 608, 616 (5th Cir.1983) ("In [*Falcon*], the Supreme Court holds that proposed class representatives must satisfy each of the Fed.R.Civ.P. 23 requirements, thereby limiting 'the class claims to those fairly encompassed by the named plaintiffs' claims' ", quoted in *Falcon*, 457 U.S. at 156, 102 S.Ct. at 2370); *Richardson v. Byrd*, 709 F.2d 1016, 1019 (5th Cir.1983) (same). The holding in *Falcon* was that shortcuts in fulfilling these requirements

are not allowed. The focus of defendants' argument for decertification is that this court, in certifying the class, relied on the shortcut of the "across-the-board" doctrine invalidated in *Falcon*, and that the class in this action does not meet the plain requirements of Rule 23.

In the order certifying the class in this action, the court used the "across-the-board" doctrine as an analogy to the facts here. *Young v. Pierce*, 544 F.Supp. 1010, 1030 (E.D.Tex.1982). The action was not, however, certified as an "across-the-board" action; that doctrine itself has relevance only to employment-related actions under Title VII. The plaintiffs do not seek to challenge HUD's actions "across-the-board." Rather, plaintiffs charge that HUD pays for discrimination, rather than fulfilling its duty to eradicate it, and that this payment is illegal. Defendants vigorously maintain that this allegation challenges their actions "across the board," as it includes numerous different public housing sites and three administratively distinct programs. This objection is largely semantic. HUD actually performs one function: it provides public housing. Obviously, however, such a complicated task requires myriad distinct administrative activities. The plaintiff class here challenges the result of HUD's activity, which, it maintains, is a system of segregated housing. HUD argues that such a result presupposes a large number of derelictions in individual administrative duties (i.e., that a support of a segregated housing system in violation of the Fifth Amendment would necessarily include HUD activities in different programs and places, as well as violations of Titles VI and VIII, and of HUD regulations promulgated thereto) which should be addressed in separate actions. The court considered this argument at length in its order certifying the class. *Id.* at 1024-25, 1030-31. It appears that the plaintiff class is not challenging "across the board" a number of conceptually distinct HUD functions, but rather a single activity which is regulated by a variety of statutes and published guidelines.

Even if this challenge were to be considered "across the board," it should be

noted that the *Falcon* case did not entirely rule out class actions of that type. The Court in *Falcon* noted:

If petitioner used a biased testing procedure to evaluate both applicants for employment and incumbent employees, a class action on behalf of every applicant or employee who might have been prejudiced by the test clearly would satisfy the commonality and typicality requirements of Rule 23(a). Significant proof that an employer operated under a general policy of discrimination conceivably could justify a class of both applicants and employees if the discrimination manifested itself in hiring and promotion practices in the same general fashion, such as through entirely subjective decision-making processes. In this regard it is noteworthy that Title VII prohibits discriminatory employment practices, not an abstract policy of discrimination.

Falcon, 457 U.S. at 159 n. 15, 102 S.Ct. at 2371 n. 15 (emphasis in original). Plaintiffs in this action have alleged—and shown—that HUD has maintained a single, uniform policy of knowingly supporting segregated housing in East Texas, in violation of the Fifth Amendment of the United States Constitution, 42 U.S.C. §§ 1981 and 1982, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631. The policy of knowingly supporting racially segregated housing prejudices black applicants and residents of public housing—the two component groups in the plaintiff class—at the same time and in the same way; both are illegally required to live in racially segregated housing if they are to benefit from the HUD program.

[1] This action fits squarely within either of the first two sentences of the *Falcon* footnote excerpted above. Like a biased employment test, the policy of offering only segregated housing has an impact on both applicants and residents—as opposed to employees. HUD has one chief function as an agency: to offer public housing. The public housing it offers in the class action counties is segregated. Applicants have a choice of white projects

or black projects. Residents live in one or the other. Clearly, both groups suffer from the policy. In a parallel to the second sentence of the footnote, HUD's policy of maintaining segregated housing, unquestionably supported here by significant proof, can fairly be characterized as a general policy of discrimination which manifests itself in a wide range of HUD practices. Plaintiffs have satisfied the commonality requirement of Rule 23(a). This result is unaffected by the holdings in *Falcon* and *Vuyanich*.

[2] Defendants also argue that the named plaintiffs are atypical and inadequate representatives because events since the certification of the class have rendered their individual claims moot. The basic premise of this argument is flawed. A class action may proceed despite the mootness of the named plaintiffs' claims. *Sosa v. Iowa*, 419 U.S. 393, 402-03, 95 S.Ct. 553, 558-59, 42 L.Ed.2d 532 (1974); *Moss v. Lane Co.*, 471 F.2d 853, 855 (4th Cir.1973); cf. *East Texas Motor Freight v. Rodriguez*, 431 U.S. 395, 403, 97 S.Ct. 1891, 1896, 52 L.Ed.2d 453 (1976) (error to certify class after named plaintiff's claims have become moot). Defendants' contention that the entire action is now moot will be treated below, in the discussion of the cross motions for summary judgment.

[3] Defendants assert that the named plaintiffs were not typical of the class at the time it was certified, and are less so

now. The court upholds its finding that the named plaintiffs' claims are typical of those of the class they represent. *Young*, 544 F.Supp. at 1031-32.¹ In general, the court finds defendants' strategy of attacking the adequacy of the class representatives, at this stage in the litigation, to be obscure. Rule 23(a) has, in relation to adequacy of the named plaintiffs, a prospective orientation. The question, as framed by subsection (4), is whether "the representative parties will fairly and adequately protect the interests of the class." As the findings on the issue of liability in this action indicate, these class representatives have already done so.

The Motions for Summary Judgment

Both parties have moved for summary judgment on the issue of liability. In addressing these motions, the court must first determine whether there are undisputed material facts sufficient to support judgment. Fed.R.Civ.P. 56(c). The parties have included with their motions extensive administrative records, depositions, interrogatories, and affidavits. In particular, HUD has produced some 105 volumes of records from its Fort Worth and Dallas offices, containing administrative documents relating to PHA's in the class counties.

The information produced by HUD indicates that the public housing sites it funds are segregated by race.² Blacks live in one

2. Defendants argue that facts revealed through discovery have shown the error of this court's original class certification. In support, HUD has advanced a number of *minikin* allegations against the class representatives. Defendants claim that plaintiff Young is an atypical representative because she was allegedly a poor tenant when she lived in segregated HUD-financed housing prior to February 1976, and because she has allegedly not been vigorous enough in seeking to obtain housing through the PHA local authority since then. These arguments are based on the deposition testimony of Martha Whiteman, Executive Director of the Clarksville Housing Authority, and defendant in *Young v. Whiteman*, No. P-82-37-CA (E.D.Tex.), which was severed from this action in the order certifying the class. Ms. Whiteman's testimony is used to support an attack on plaintiff Beachman, who defendants allege "has a credit problem." (Brief at 21). Finally, defendants claim that plaintiff Jackson is an atypical representative because she declined to be the first black to

move to an all-white project maintained by the Pittsburgh PHA local authority when given a chance to do so in August 1982, while conceding elsewhere that only sixteen of the roughly 2,200 class members offered the chance to be lone pioneers in desegregation have done so. Defendants' Summary Judgment Memorandum at 24. The court is not persuaded that these allegations, if true, tend to show that the named plaintiffs' claims—that HUD has acted to their detriment by offering them only segregated housing—are atypical of those covered by the class. See generally, 3B J. Moore, Moore's Federal Practice § 23.06-2 (1985). These plaintiffs were found to be typical representatives of a class of applicants for and residents of HUD-assisted housing in East Texas. The allegations now adduced by defendants as to the plaintiffs' personal qualifications are inadequate to disturb this court's earlier ruling.

3. See *infra* Appendix.

set of public housing sites, whites in another. Of 219 sites, made up of low rent sites under management, insured-assisted sites under management, and Section 8 new construction sites under management, 121—more than half—are completely segregated, one-race projects. An additional sixty-two project sites are 85% or more one-race. In many cases the percentage of non-predominate racial group members is comprised of one or two units in an otherwise one-race project site.

In its standard compliance agreement, *see infra* p. 1047, defendant defines a race-predominate site as one in which 75% or more of a site is occupied by one race. *See, e.g.,* Agreement, Volume 41, Fort Worth Office Records, at 55. Using this yardstick, an additional sixteen sites would be added to the list of segregated projects. An additional five sites can be added to this number if black and hispanic residents are treated together. Thus, 199 of the project sites—more than 90%—are either predominately minority or predominately white, with the great majority of these being completely segregated.

The pattern of segregation is as striking if projects are grouped according to the form of support they receive from HUD. A measure of the extent of segregation in HUD-assisted housing is that it is simpler to summarize racial occupancy patterns by giving the percentage of integrated facilities. Only eleven, or 7%, of the low rent projects are not predominately one race. Of thirty-six insured-assisted projects, four, or 11%, are not predominately one-race. Of twenty-two Section 8 new construction projects, five, or 23%, are not predominately one race. A close analysis also reveals skewed patterns of participation in these programs. While the races occupy low-rent housing in roughly equal numbers, 77% of all insured-assisted units in the class counties are occupied by blacks. In contrast, 76% of Section 8 new construction units are occupied by whites. Defendants' data also indicates that, in regard to these last two programs, discrimination can be parsed along temporal lines: 84% of projects approved before 1972 are 85 to

100% black. Of those approved after 1972, 48% are 85 to 100% white, 12% are 85 to 100% black, and 39% are at least partially integrated.

The parties agree that there is a rough equivalency of demand for public housing between white and minority groups in the class action counties. According to the 1980 Census, blacks constitute 43% of the persons living below the poverty level in the class action counties, and 66% of those living in housing without plumbing. Chart F, Defendants' Motion for Summary Judgment. The percentage of blacks with incomes below the poverty level for each of the counties in this action is set out in the Appendix.

In conclusion, then, a number of factual conclusions may be drawn from defendants' data: (1) the vast majority of projects are predominately one race; (2) the percentage of one-race sites is highest in the low rent projects; (3) blacks participate disproportionately in older insured-assisted projects; (4) whites participate disproportionately in Section 8 new construction projects;⁴ and (5) the races have roughly equivalent needs for public housing.

The extent of HUD's knowledge of and support for this system of segregated housing is sharply disputed by the parties. In the early stages of this litigation, HUD professed ignorance of segregation in public housing, and now alleges that it has learned of its existence only through this action. HUD also argues that segregation exists in public housing only in spite of its vigorous efforts to eradicate it. Plaintiffs allege that HUD has a duty to acquaint itself with its own functionings, has been in fact aware of the racially identifiable nature of the housing it operates, and has continued to fund and operate this housing while knowing it to be segregated. In order to resolve the disputed questions, it is necessary to look at the historical background of the present situation of public housing in East Texas. The court will first set out the facts of the development of the national public housing system, of which the class action counties are a part. Specif-

⁴ This court's conclusion of law that HUD does have a duty to know if it is funding discrimina-

tion is set out below. *See infra* pp. 1055-1056.

ic facts relevant to HUD's actions in East Texas will then be discussed.

Prior to 1964, public housing was *de jure* segregated. Deposition of Flieller, HUD Director of Housing, Dallas Area Office, at 40-41; Comment, *The Public Housing Administration and Discrimination in Federally Assisted Low Rent Housing*, 64 Mich.L.Rev. 871, 872 n. 4 (1966). These projects were operated according to a Public Housing Administration ("federal PHA") policy of "separate but equal." *Cohen v. Public Housing Administration*, 257 F.2d 73, 74 (5th Cir.1958) (federal PHA regulations required that public housing programs "reflect equitable provisions for eligible families of all races determined on the approximate volume of their respective needs for such housing."). As of 1962, there was only one public housing project in the Southern states having even token integration. R. Covell, Assessment Report by the Office of HUD Program Compliance 2 (December 4, 1981) (Plaintiffs' Summary Judgment Exhibit 58).

In 1962, a nationwide policy against discrimination in federally assisted housing was established by President John F. Kennedy's Executive Order No. 11063, which stated: "The granting of federal assistance for ... housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws." The federal PHA—HUD's predecessor agency—responded to this order by issuing regulations requiring future contracts with local housing authorities to include an antidiscrimination covenant, but exempting all existing projects from any duty to desegregate. Comment, *supra*, at 878-79. The federal PHA had no policy of tenant selection and assignment aimed at desegregation until 1964. In that year, Title VI of the Civil Rights Act of 1964 was passed, prohibiting racial discrimination in federally funded housing. In response to Title VI, the federal PHA permitted local housing authorities to follow a "Freedom of

Choice" policy, allowing prospective tenants to choose a housing site in which they desired to live. *Id.* The only activity engendered by this new policy seems to have been the distribution by the federal PHA of Form PHA-3037, requiring the local provider to acknowledge previous segregation and adopt the freedom of choice plan. See, e.g., Plaintiffs' Summary Judgment Exhibit 66 (1965 example from Jefferson PHA). This new policy had no significant impact nationwide. R. Covell, *supra*, at 4. The record is bereft of any evidence of a single project being desegregated in response to federal PHA pressure before 1964.

In 1965, HUD was established and given responsibility for the federal PHA programs. 42 U.S.C. § 3534(a) (1965); R. Covell, *supra*, at 6. The record contains no indication of HUD activity designed to end segregation between 1965 and 1967. In 1967, HUD promulgated regulations, pursuant to Title VI, instituting a new tenant selection and assignment policy. 24 C.F.R. § 1.4(b)(2)(ii). This policy, which is still in effect, specifies a racially neutral tenant assignment plan "providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of Title VI of the Civil Rights Act of 1964." According to the 1981 Assessment Report by the Office of HUD Program Compliance:

There were some assumptions about race which underlay the adoption of the 1967 policy. It was assumed that in many cities the local housing authorities had black projects with long waiting lists and white projects with no waiting lists at all. It was assumed that offers of units in white projects would overcome the reluctance of blacks to move into such projects, resulting in the desegregation of the previously white projects. The policy was not designed to desegregate black projects....

R. Covell, *supra*, at 6.

In 1967, HUD also issued site-approval rules which prevented HUD approval of

"any proposal to locate housing only in areas of racial concentration." HUD Low-Rent Housing Manual, § 205.1 14g (rev. ed. Feb. 1967), *quoted in Shannon v. United States Department of Housing and Urban Development*, 436 F.2d 809, 820 (5th Cir.1970).

These HUD policies were ineffective in remedying past segregation or preventing segregated occupancy in new project sites. This failure was apparent, in regard to the tenant selection plans, as early as 1969. Federal Programs Section, Civil Rights Division, U.S. Department of Justice, Interagency Survey Report Evaluation of Title VI Enforcement at the U.S. Department of Housing and Urban Development 38 (September 1977) (Plaintiffs' Summary Judgment Exhibit 6) (hereinafter cited as Interagency Survey). In November 1972, HUD's Office of General Counsel wrote that the existing tenant selection and assignment policy was "difficult to enforce and of dubious value" and proposed a new plan. Letter from David O. Maxwell, General Counsel, HUD, to David L. Norman, Assistant Attorney General, Civil Rights Division, Department of Justice (November 15, 1972), *quoted in Interagency Survey, supra*.

In 1972, HUD promulgated regulations implementing Title VIII of the Civil Rights Act of 1968, which governed site selection and marketing for HUD projects. 24 C.F.R. §§ 200.600, 200.700. These regulations are prospective and use explicit racial classifications, in contrast to the tenant selection and assignment plans. The thrust of the 1972 regulations is to prohibit construction of new public housing projects in areas of minority concentration, and to require developers in other areas to follow an Affirmative Fair Housing Marketing Plan ("Fair Housing Plan"). See Maxwell, *HUD's Project Selection Criteria—A Cure for "Impermissible Color Blindness"*, 48 Notre Dame Law. 92 (1972).

In practice, each applicant under the 1972 regulations begins the process of requesting federal funding by proposing a project site to HUD. HUD rates the site

according to the eight criteria set out in 24 C.F.R. § 200.710: an area of minority concentration is rated "poor," a mixed area is "adequate," and one of nonminority concentration is rated "superior." A poor rating on any of the criteria results in disapproval. HUD's actions in consistently refusing to fund housing in minority areas is balanced, in principle, by efforts to market new public housing to minority group members. HUD's Fair Housing Plan Handbook states that

[t]he program indicated by the Plan should include efforts to reach those persons who traditionally would not have been expected to apply for the housing. For housing located in predominately white areas, it will normally be necessary to make special efforts to make its availability known to minorities; similarly, for housing in areas of minority concentration, special efforts may be needed to make its availability known to whites.

Handbook for Implementation of Affirmative Fair Housing Marketing Regulations 3 (June 1973) (Plaintiffs' Summary Judgment Exhibit 21) (hereinafter cited as Handbook). The Handbook goes on to state that the Equal Opportunity Staff will conduct compliance reviews of the Fair Housing Plan throughout the life of the HUD mortgage. *Id.* at 5. As the then General Counsel of HUD succinctly wrote at the time these regulations were promulgated, "Clearly, the availability of low—and moderate—income housing outside an area of minority concentration means nothing to residents of that area who never learn of it." Maxwell, *supra*, at 101.

Data supplied by HUD indicates that it began to process applications for Section 8 New Construction projects in 1977. These projects are subject to site selection and marketing regulations which parallel those of 1972 (relating to rent supplement and insured-assisted projects). The site selection standards provide:

(c) the site must not be located in:

(1) An area of minority concentration unless (i) sufficient, comparable opportunities exist for housing for minority fami-

lies, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area....
or

(2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

24 C.F.R. § 880.206. The Fair Housing Plan standards for Section 8 New Construction are the same as for other HUD projects. 24 C.F.R. § 880.601(a). Proposed projects must set out plans for reaching minorities (if the project is in a predominantly white neighborhood) and must state an expected racial occupancy which will be achieved through the plan. HUD then has a duty to monitor the fulfillment of the plan, and refer instances of non-compliance with the plan to the HUD Regional Administrator for Equal Opportunity. Handbook, *supra*, at 4. While these regulations do not hold HUD to any percentage of minority occupation, they clearly charge the agency with, at the very least, knowing the proposed and actual racial mixture.

The 1977 Interagency Survey of HUD Title VI enforcement activities, conducted by the Civil Rights Division of the Department of Justice, pointed out numerous deficiencies in HUD's nationwide performance of its duties to prevent and remedy segregation in public housing. The report found that HUD had failed to develop an effective Title VI review program, that it had failed to remedy possible civil rights violations in a timely manner, and that the existing system of tenant assignment was ineffective in remedying segregation. The survey recommended that HUD develop a new, effective plan. Interagency Survey, *supra*. HUD agreed to do so. Memorandum of Understanding Between the Department of Housing and Urban Development and the Civil Rights Division, Department of Justice, Regarding the Enforcement of Title VI of the Civil Rights Act of 1964 (1979) (Plaintiffs' Summary Judgment

Exhibit 7). HUD has made no change in its tenant selection policies as a result of this agreement, however. Deposition of John Knapp, General Counsel, HUD, at 49.

If a HUD-sponsored project is found to be in violation of Title VI, HUD's response is today what it was in 1975: the offending owner or PHA is required to enter into a compliance agreement, ostensibly designed to eliminate racial segregation. Under this plan, an applicant is first offered units in projects where their race does not predominate. If no units are available at these sites, then the applicant will be offered units at sites where his or her race does predominate. An applicant may choose to postpone making a unit choice without losing his or her place on the waiting list for public housing. However, if applicants refuse all units in projects where their race does not predominate, they are moved to the bottom of the waiting list. Compliance and Enforcement Procedure for Title VI of the Civil Rights Act of 1964, Model Compliance Plan, Appendix 4.5 (June 1976) (Plaintiffs' Summary Judgment Exhibit 57). Adoption of such a compliance agreement serves to administratively clear HUD's finding of Title VI non-compliance. See Affidavit of John Eubanks, HUD's Acting Regional Director of Fair Housing and Equal Opportunity, at 15 (June 1983) (Plaintiffs' Summary Judgment Exhibit 16).

Public Housing in East Texas

The result of HUD's involvement in the provision of East Texas housing—that is, a system of segregated housing—has been set out above and in the Appendix to this order. The history of public housing in the class action counties is simply that of HUD allowing PHA's to construct segregated housing projects and selectively enforcing its regulations in a way calculated to insure that these projects remained segregated.

It appears from information in the administrative record that, at the time HUD was created, there were thirty-two public housing authorities in the class action counties, twenty-seven of which operated historically segregated projects, and four of

which provided housing for whites only. In the period between 1966 and 1969, eighteen new public authorities opened in the class action counties. Of these, thirteen were segregated from the beginning, and three were all white. Also during this period, large numbers of HUD insured-assisted rental housing units were constructed in East Texas which were overwhelmingly black. Between 1970 and 1974, it appears that eight new public housing authorities were formed in the class counties. Five of these were exclusively white, and two were segregated.

Starting in 1977, HUD approved and funded large numbers of Section 8 New Construction projects. HUD consistently enforced the site-selection criteria prohibiting construction in minority areas. See 24 C.F.R. § 880.206(c). Every HUD-approved Section 8 New Construction project in East Texas is in what HUD defines as a white neighborhood. Defendants' Summary Judgment Memorandum at 18-19, 30-34.

While HUD vigorously enforced the site-selection regulations governing Section 8 New Construction, it appears to have abdicated altogether its duty to enforce the Fair Housing Plan regulations which theoretically make this housing available to minorities. A review of the documents submitted by HUD indicates that HUD approved three projects which did not submit any Fair Housing Plan (Raintree Tower and Northridge Manor in Beaumont; Pine Lakes Estate in Nacogdoches). Two projects were approved which submitted Fair Housing Plan's calling for no expected occupancy by blacks. For those projects which did submit plans, there is no apparent relationship between estimated need for housing by blacks and the proposed percentage of black occupants in the Fair Housing Plan. In most cases, the proposed figure is about half of need, as reflected in the percentage of blacks in surrounding areas with incomes below the poverty level. Additionally, HUD appears to have ignored totally its responsibility to monitor the results of the Fair Housing Plans. Only half of the Section 8 New Construction projects

submitted reports at all. These reports were in each instance late. The reports indicate that few projects actually fulfilled their professed goals of minority participation. HUD appears to have done nothing to review or monitor the initial occupancy process. As a result, those projects which did tardily submit their occupancy reports presented HUD with a *fait accompli*, generally consisting of an all-white or mostly white project.

The administrative record submitted by HUD contains numerous and compelling indications that HUD was actually aware of the segregated nature of the housing it had created and continued to fund. HUD's own findings, made before the filing of this action, revealed that at least twenty of the public housing authorities in the class action counties were operating in violation of Title VI. For example, a 1977 occupancy audit of the Avery PHA found that it was not using the Methods of Administration (MOA) promulgated by HUD under Title VI, and that it kept no records of applications, rejections, or tenant files. The Avery PHA's one site was at that time and, according to HUD's most recent data, is still completely white.

In 1967 a HUD Regional Fair Housing Equal Opportunity Officer noted in a report that strictly segregated sites were being maintained in Corrigan through a "freedom of choice" tenant assignment plan. HUD reviewed this same PHA in 1978, and found that it was again not following HUD's regulation on the tenant selection process. The Corrigan PHA has three all-black sites, one all-white site, and one site that is 73% white.

The Diboll PHA's occupancy reports filed with HUD between 1976 and 1979 show a consistent pattern of separate black and white race-predominate projects. Two of the Authority's five projects are now segregated.

In 1971, HUD received a complaint about the Edgewood PHA's allegedly discriminatory policies, and found that the PHA had used a "freedom of choice" tenant assignment system at initial occupation which

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resulted in "racial concentrations." The letter to the PHA stated that "[s]uch a situation is in violation of the objectives of Title VI of the 1964 Civil Rights Act as well as your tenant assignment plan." The Edgewood PHA now maintains three all-black sites and an integrated site.

A 1974 Occupancy Report found that the Garrison PHA was not maintaining a waiting list, as required in the tenant assignment plan. In 1978, another report revealed that the PHA was maintaining separate waiting lists, one for each segregated site. The report states, "This is totally against all [f]ederal [r]ules and [r]egulations." The Garrison PHA now maintains two sites. One is all black; the other, all white.

A 1978 inspection report by a HUD officer refers to the Ward PHA's three sites by race, and explicitly sets forth their racial composition. According to HUD data, the PHA operates one all-black site, one all-white site, and one site which is now 75% black.

A 1979 occupancy audit found that the Gilmer PHA was in violation of Title VI in that it maintained separate waiting lists by race and color. The Executive Director of the PHA replied to HUD,

I guess the reason we can't get our projects together on race is because when these projects were built there was no such thing as discrimination. One project was built for Minority and the other one for Non-Minority groups. It seems that is the way they still want it.

The Gilmer PHA maintains one all-black site and one all-white site.

The Hemphill PHA operates two sites. One is 100% white; one is 78% black. A 1978 occupancy audit by HUD revealed that the PHA was not using a waiting list for assigning tenants, as required by HUD regulations.

A 1979 occupancy audit of the Kirbyville PHA revealed a "totally inadequate" system of processing applications, the complete lack of a waiting list, and failure by

5. According to HUD's latest data, that "choice"

the PHA to file required reports with HUD. The PHA's three sites are currently 100% white, 100% black and 94% black.

The Linden PHA maintains an all-white site and an all-black site. A 1974 audit found that the PHA was not using a waiting list, and that Title VI reports had not been made.

The Malakoff PHA likewise has two sites, each completely segregated by race. A 1976 audit noted, "We inquired about [the segregated sites] and the [Executive Director] explained that there was absolutely no discrimination involved. He said offers were made to tenants at both locations, but in the end it has been a matter of choice as to where the applicants want to live."

In 1973, HUD found that the Mt. Pleasant PHA was using a credit check requirement to discriminate against blacks, and that as a result black occupancy was less than half of the amount—roughly 30%—indicated by the percentage of low income blacks in the area. It also found that the PHA was not following basic tenant assignment procedures. The PHA's two sites were 95% white and 68% white in 1982.

The Omaha PHA maintains eight sites. In 1975, a HUD occupancy audit found: The application process was generally in order (some changes recommended) and the Executive Director appears to be proceeding with minimal or no bias. The project sites are segregated but the sites with greatest numbers of blacks and whites immediately adjoin one another, resulting in blacks and whites living on the same street but not totally integrated. Executive Director says this is by choice and that she will not hesitate to totally integrate when that choice is made⁶ even though she feels it will run off many whites. [The HUD Auditor] recommended that she continue to follow the adopted [Methods of Administration]. HUD's most recent data indicates that four of the PHA's sites are all-black, one is 90% black, and three are all-white.

has still not been made.

The Orange County's five sites contain no blacks. A 1979 occupancy audit found "no history of a single Black family ever applying at this Authority." It recommended that "[e]fforts should be made to house all low income families in the county. Eligible Black families might be found and made aware of the authority's available housing by contacting Black groups and churches in the area."

The Paris PHA has four sites, one all-white, one 97% white, one all-black, and one 87% black. A 1974 occupancy audit revealed that this segregation—which was complete at the time—had resulted from use of a "freedom of choice" policy in tenant assignment. The PHA was instructed to report any Title VI complaints to HUD in the future, and to post required notices on bulletin boards in the PHA office foyer.

A 1968 occupancy audit of the Pittsburg PHA revealed that "[r]equired methods of administration pursuant to Title VI of the Civil Rights Act of 1964 ha[d] not been adopted." The PHA's two sites were completely segregated when this action was filed.

The Talco PHA operates one all-white site. In 1970, a HUD auditor visited the project. At that time, the PHA was seeking funding for a new site. The auditor wrote that:

[The PHA chairman] was anxious to discuss the requirements of Title VI and most of all what happens to [a] project in development if the Authority is found not in compliance with the [Methods of Administration]. I told [him] I had seen some projects stopped. All this was brought up because of a young Negro man who was next in line for a unit in the present project. According to [the chairman], the Authority may lose some white tenants, if Negro families move in. I strongly emphasized to both [the chairman] and [the executive officer] that the Authority must comply with its adopted

plan. Thus, this young man should be offered a unit.

An occupancy audit of the same PHA in 1978 revealed that it still had not adopted HUD's required methods of administration. In addition, the Executive Director was quoted as saying "there were no blacks in the project, [he] did not want them, and if there was a vacancy available, a white person would be put in right now."

A 1974 Title VI compliance review of the Texarkana, Texas, PHA⁶ states that the Authority was not using the tenant selection procedures set out in HUD regulations. In 1975 another investigation was conducted. Because the Authority had adopted the required regulations, it was found to be in compliance with Title VI. The second report indicates, however, that four of the Authority's six projects are segregated, even though a high number of units were vacant due to modernization. According to the latest data supplied by HUD, the PHA now operates eleven sites. Three are predominately black, five are predominately white, and three are integrated.

The Trinidad PHA operates four projects. Two are all-white, one is 83% white, and one is all-black. Of the thirty units in these projects set aside for the elderly, all are occupied by whites. A recent HUD Title VI review indicated that blacks initially occupied one site. Subsequently, all blacks were "prohibited from occupancy" to make room for white elderly tenants. During this period, evidently, a HUD auditor visited the PHA. His 1974 report states that no blacks reside in the PHA's sites, and that "[n]o indication of discrimination [was] noted."

In 1974, a HUD Title VI compliance review of the Crockett PHA showed that it was not using one of the approved tenant assignment plans. A 1978 report shows the same, and notes that the PHA operates five completely segregated sites. After this finding, the PHA entered into a volun-

kana, Arkansas PHA).

6. See *Clients Council v. Pierce*, 711 F.2d 1406 (8th Cir.1983) (discussing segregation in Texar-

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tary compliance agreement which required that the PHA submit occupancy reports to HUD, over a period of two years, showing its efforts to bring its conduct into line with Title VI. These reports indicated that, while whites were occasionally offered an opportunity to live in all-black sites, no black was ever offered an apartment at the white site. The result of HUD's enforcement activity in 1982 was one all-white project, two all-black projects, a 98% black project, and an 88% black project.

Also in 1974, the HUD Dallas Area Office circulated a memorandum addressed "TO ALL PUBLIC HOUSING AUTHORITIES." Volume 42, Fort Worth Office Records, at 34. This memorandum states that the Dallas Area Office, in its review of East Texas projects, found "numerous cases of non-compliance in implementing the Tenant Selection and Assignment Plans."

In each instance set out above, HUD had direct knowledge, reflected in its own administrative records, that conditions in violation of Title VI existed in the class action counties. Typically, the violations were in the crucial—for the purpose of racial make-up at sites—area of tenant assignment. HUD received, at the very least, indications that twenty of the PHA authorities in the class counties were circumventing HUD regulations and assigning tenants in ways producing segregation. At the most, HUD's response consisted of adoption of a remedial plan. Usually, PHA's were simply admonished to bring their conduct into line with HUD regulations. As long as the proper documents were adopted, and reports filed, HUD approved the PHA's actions.

Deposition testimony by the HUD officials responsible for Title VI enforcement in the class action counties indicate that PHA's were free to maintain overtly segregated sites if they followed HUD's guidelines in doing so. Deposition of Peter T. Hinojosa, FH O Director of Dallas Office, and Earnie F. Wilkerson, Equal Opportuni-

ty Specialist, 5-7; Deposition of Irving Statman, Manager of Dallas HUD office, 24, 25; Deposition of Leonard Chaires, Regional FHEO Administrator, 55. Similarly, these officials maintain that HUD has no power or duty to remedy the effects of past discrimination, *id.* at 124-125; Deposition of John Eubanks, Compliance Director of FHEO Administrator, 23-24. As Eubanks succinctly stated in relation to PHA's that were found to maintain segregated housing: "I think it is best we'd have something to propose to them. But to require them to do something, would, in my judgment, be beyond our scope." *Id.* at 24 (emphasis added). Each of the PHA's found in violation of Title VI in the 1960's and 1970's is still maintaining segregated sites. Perhaps most significantly, the flow of public dollars funding these illegally segregated PHA's has in each case continued uninterrupted.

The above discussion sets out the undisputed facts of HUD's involvement in the creation of the existing system of public housing in East Texas. The results of that involvement are undisputed: a system of segregation. Defendants argue, however, that their actions since this cause was filed have rendered the controversy between them and the plaintiffs moot.

In the interval since this action was filed, HUD has conducted an administrative review of every public housing authority in the class counties. In each case where a public housing agency has been found in violation of Title VI, it has been required by HUD to sign a voluntary compliance agreement. *See supra* pp. 20-21. Since this court's approval of the parties' proposed transfer plan in *Young v. Whitman*, No. P-82-37-CA (E.D.Tex. November 25, 1983), HUD has taken further measures. The General Counsel of HUD, John Knapp, has submitted an affidavit outlining these steps. Knapp states that HUD has created a task force to address the problem, and has called a meeting of public housing authority directors from the class counties. Each PHA which has been found to be in violation of Title VI and which

appears to have over-housed tenants' is, according to Knapp, required to submit a plan for transferring these tenants to appropriately sized units. It is hoped that this step, referred to by Knapp as "Phase I," will lead to desegregation. HUD has not yet evaluated the effectiveness of this program in the class action counties. After each PHA has completed its Phase I efforts, Knapp states that it will then be required to submit a Phase II plan, outlining what the PHA sees as further steps to be taken toward desegregation.

Plaintiffs' Fifth Amendment Claim

[4, 5] HUD has intentionally and knowingly continued to promote purposefully segregated housing in the class action counties. It is beyond dispute that the Constitution prohibits the government from funding racial discrimination with the public dollar. Indeed, any tangible assistance to segregation is prohibited if it has a "significant tendency to facilitate, reinforce, and support private discrimination." *Norwood v. Harrison*, 413 U.S. 455, 466, 93 S.Ct. 2804, 2811, 37 L.Ed.2d 723 (1973); see also *Washington v. Seattle School District*, 458 U.S. 457, 485, 102 S.Ct. 3187, 3202, 73 L.Ed.2d 896 (1981); *Gilmore v. City of Montgomery*, 417 U.S. 556, 573-74, 94 S.Ct. 2416, 2426, 41 L.Ed.2d 304 (1974); *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 721-722, 81 S.Ct. 856, 859-60, 6 L.Ed.2d 45 (1961); *Cooper v. Aaron*, 358 U.S. 1, 19, 78 S.Ct. 1401, 1410, 3 L.Ed.2d 5 (1959) ("State support of segregated schools through any arrangement, management, funds or property cannot be squared with the [Fourteenth] Amendment's command that no State shall deny to any person within its jurisdiction the

equal protection of the laws."); *National Black Police Association v. Velde*, 712 F.2d 569, 581 (D.C.Cir.1983); *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir.1971) (federal funding of segregated housing program violates due process); *Green v. Connally*, 330 F.Supp. 1150, 1164-65 (D.D.C.) ("Clearly the Federal Government could not under the Constitution give direct financial aid to [institutions] practicing racial discrimination."), *aff'd sub nom. Coit v. Green*, 404 U.S. 997, 92 S.Ct. 564, 30 L.Ed.2d 550 (1971). But see *Bob Jones University v. United States*, 461 U.S. 574, 579 n. 4, 103 S.Ct. 2017, 2022 n. 4, 76 L.Ed.2d 157 (1983) (Rehnquist, J., dissenting) (state support of discrimination should be insufficient to constitute liability unless coupled with showing of discriminatory intent). HUD's funding, regulation and assistance of local PHA's is clearly unconstitutional support of segregation within the meaning of these cases.

[6] Defendant argues that its relationship with public housing is too attenuated to give rise to liability.⁸ In *Velde*, the Court of Appeals for the D.C. Circuit held that "[a]lthough some forms of government involvement are sufficiently indirect and complex that they require a careful balancing of factors, the constitutional prohibition on intentional discrimination clearly prohibits the government from funding other agencies engaged in such practices." *Velde*, 712 F.2d at 582. While it seems intuitively obvious that the combination of federal funding, technical assistance, and regulatory oversight of segregation would constitute sufficient involvement to give rise to liability, see *Cooper*, 358 U.S. at 19, 78 S.Ct. at 1410, HUD draws support for its argument to the contrary from two re-

7. Segregation often leads to "over housing." In the typical case, "a white elderly family or individual is placed in a unit for which the more appropriate applicant would be a larger family where the only such large family applicants on the waiting list were black." Knapp Affidavit at 12.

8. While defendant argues that there is simply no federal action in the providing of public housing

in East Texas, it also concedes that it has a duty to desegregate this housing, and argues that this entire action is moot because of HUD's successful desegregation actions. These arguments are, obviously, inconsistent in their premises: lack of federal action suggests that HUD's relationship is too attenuated for liability vis-à-vis claims that defendants' action has made it moot.

cent Supreme Court cases, *Blum v. Yaretsky*, 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982), and *Rendell-Baker v. Kohn*, 457 U.S. 830, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982). In these opinions, the Supreme Court discussed the circumstances under which the action of a recipient of federal or state funds can be challenged as "state action."

In *Blum*, a class of hospital patients sought to bring suit against the Commissioners of the New York Department of Social Services and the Department of Health. The plaintiff class alleged that these state agencies responded to the medical placement decisions of private doctors by adjusting the level of state medical benefits. The question presented was whether the placement decisions should therefore be treated as those of the state for purposes of a section 1983 action. The Court noted that the challenged decisions "ultimately turn on medical judgments made by private parties according to professional standards that are not established by the State," *Blum*, 457 U.S. at 1008, 102 S.Ct. at 2788, and held that the transfer decisions were not state action.

In *Rendell-Baker*, teachers sought to bring a section 1983 action against the school which had formerly employed them. They alleged that they had been wrongfully discharged, and argued that the terminations were state actions because their employer received a high proportion of its funds from state and federal agencies. The Court in *Rendell-Baker* followed the analysis of the *Blum* opinion, and noted that, while the school received public funds, its personnel decisions were largely unregulated by the state, *Rendell-Baker*, 457 U.S. at 841-42, 102 S.Ct. at 2771-72. The Court held that the school was not a state actor in its personnel decisions.

The facts of the case at bar present a number of contrasts to those of *Blum* and *Rendell-Baker*. First, plaintiffs here challenge HUD's acts directly, not under a theory of vicarious liability for the actions of local PHA authorities. Second, the decisions which produce the racial makeup of

public housing are heavily regulated by HUD: HUD has recognized its duty under Title VI to involve itself in these decisions, by forcing local providers of public housing to follow tenant assignment, site placement, and affirmative action marketing plans designed to prevent racial segregation. HUD is directly involved in all aspects of tenant placement. Finally, neither *Blum* nor *Rendell-Baker* deals with federal funding and regulation of racial segregation. Nor do these cases purport to overrule the unambiguous precedent, cited above, forbidding states and the federal government from funding or otherwise involving itself in racially discriminatory actions. It is clear that the action challenged here is federal action, and that it constitutes direct support for racial discrimination.

[7] Defendants argue that plaintiffs must show, not only that HUD has supported racial discrimination, but that it has done so with discriminatory intent. While the record does establish HUD's intent to discriminate, *see infra*, this argument fundamentally misapprehends the law. Defendants rely principally on Supreme Court cases involving facially neutral government practices allegedly having a disparate impact. *See Personnel Administrator v. Feeney*, 442 U.S. 256, 273-81, 99 S.Ct. 2282, 2293-97, 60 L.Ed.2d 870 (1979); *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264-68, 97 S.Ct. 555, 562-65, 50 L.Ed.2d 450 (1976); *Washington v. Davis*, 426 U.S. 229, 239-241, 96 S.Ct. 2040, 2047-48, 48 L.Ed.2d 597 (1976). The actions complained of here are not in any sense facially neutral: HUD supports those authorities it knows to discriminate. HUD has received numerous indications that substantially all local PHA's in the class counties discriminate, and even that they intend to keep doing so, and in no instance has effective action to end or discourage discrimination been taken. HUD has also followed racially conscious policies which have furthered this discrimination. These policies include refusal to fund projects in areas of minority concentration, failure to enforce its own affirma-

tive marketing regulations, and use of race-conscious remedial tenant assignment plans which appear to be utterly ineffectual in effecting desegregation. Nor does HUD suggest what its facially neutral actions might be, or how they could lead to the stark pattern of segregation found in the class counties. The cases relating to facially neutral government action are therefore simply inapposite. Indeed, if defendants' argument were correct, there would be no barrier to the federal government's funding of racially segregated schools if the government were to protest that its motives were educational, rather than discriminatory. *National Black Police Association v. Veide*, 712 F.2d 569, 581 n. 70 (D.C.Cir.1983).

Even if HUD's discriminatory intent had to be shown, the same finding of liability would obtain. *Washington v. Davis* holds, first, that discriminatory intent must be shown to establish liability when facially neutral government action is at issue and, second, that a mere showing of statistically disparate impact will often be insufficient to give rise to a tenable inference of discriminatory intent. *Davis*, 426 U.S. at 244-245, 96 S.Ct. at 2049-2050. "'Discriminatory purpose,' however, implies more than intent as violation or intent as awareness of consequences. It implies that the decisionmaker ... selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Feeney*, 442 U.S. at 279, 99 S.Ct. at 2296 (citation omitted). These cases do not, as defendants suggest, set out a substantive rule of law that a massively discriminatory outcome cannot be used to show intent to achieve this result. Rather, they discuss the circumstances under which intent may be inferred from statistics. In a footnote, the Court in *Feeney* explained further:

[w]hen the adverse consequences of a law upon an identifiable group are inevitable ... a strong inference that the adverse effects were desired can reasonably be drawn. But in this inquiry—

made as it is under the Constitution—an inference is a working tool, not a synonym for proof. When, as here, the impact is essentially an unavoidable consequence of a legislative policy that has in itself always been deemed to be legitimate, and when, as here, the statutory history and all of the available evidence affirmatively demonstrate the opposite, the inference simply fails to ripen into proof.

Id. at 279 n.25, 99 S.Ct. at 2296 n. 25. This footnote is highly relevant to HUD's arguments. First, it is evident that the adverse consequences of HUD's policies upon blacks were inevitable: HUD's policies of ineffectively enforcing Title VI, of failing to supervise racially prejudiced local PHA's, of vetoing construction in minority neighborhoods, and of ignoring regulations requiring HUD to monitor affirmative action in marketing were simply a blueprint for segregation. Nor has HUD suggested that segregation is an "unavoidable consequence" of a legitimate policy. In this action, at least, the court is satisfied that the inference which arises from the segregated housing in the class counties *does* ripen into proof.

HUD's discriminatory intent is, moreover, demonstrated by an "inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266, 97 S.Ct. at 564, quoted in *Rogers v. Lodge*, 458 U.S. 613, 618, 102 S.Ct. 3272, 3276, 73 L.Ed.2d 1012 (1982). HUD's chief defense to the claim of intentional discrimination is the contention that, until this action was instituted, HUD was ignorant of the uses to which the public funds it distributes were being put. HUD seems to argue that it can fulfill its duty to eradicate segregation through the ostrich-like tactic of maintaining this ignorance.

[8, 9] It has been clear at least since the passage of Title VIII—if not from the date of Executive Order 11063 and HUD's inception as a federal agency—that HUD has had an affirmative duty to eradicate segregation. A necessary prerequisite for ful-

filling this duty is to obtain information about discrimination practiced under HUD's auspices. *Shannon v. U.S. Department of Housing and Urban Development*, 436 F.2d 809, 821 (3d Cir.1970); see also *Penick v. Columbus Board of Education*, 663 F.2d 24, 27 (6th Cir.1981) (state school board policy requiring complaints of segregation before an investigation would be commenced, coupled with available indications that segregation did exist, show violation of duty to investigate); *Reed v. Rhodes*, 662 F.2d 1219, 1225 (6th Cir.1981) (state school board has duty under state and federal law to discover and eliminate segregation in schools). Even if its protestations of ignorance were to be accepted, HUD would have violated the Fifth Amendment by willfully ignoring the facts necessary to fulfill its constitutional and statutory duties.⁹

HUD's duty to investigate aside, it is clear that HUD was actually aware of the segregated housing which gave rise to this action. The record contains a number of instances where HUD received such knowledge directly. These incidents constitute compelling evidence that housing in the class action counties was substantially segregated long before this action was filed. The court has listed twenty such instances. In each case, a local housing authority was found, before the institution of this action, to be in substantive violation of Title VI or of the regulations promulgated to implement its mandates. Such a mass of violations in representative PHA's should have led HUD to a realization that violations of Title VI were endemic in the class counties.

HUD actually realized the true situation. Knowledge of discrimination in the class counties is demonstrated by the September 20, 1974, memorandum, titled "TO ALL HOUSING AUTHORITIES," which stated that surveys conducted by the Dallas Area Office had "revealed numerous cases of non-compliance in implementing the Tenant Selection and Assignment Plan adopted in

the Methods of Administration." Volume 41, Fort Worth Office Records, at 342-43. The memorandum informs all PHA's that adoption of the plan is required under Title VI, and that Title VIII mandates that all citizens be given an equal right to apply for public housing. It concludes that "[t]he Dallas Area Office Management and Equal Opportunity staff [of HUD] will continue to review housing authorities[]" compliance with the above requirements." This memorandum shows, first, that HUD was conducting periodic reviews; second, that these reviews indicated widespread non-compliance with HUD's Title VI regulations; and, finally, that HUD was aware that instances of non-compliance were not limited to the actual abuses officially reported in reviews. HUD's own surveys, as evidenced by the reports themselves and by its memorandum, clearly show that HUD was aware of the segregated nature of the housing which it funds.

In addition, it should be noted, HUD had received numerous indications that segregation was present in HUD housing everywhere, and therefore *a fortiori* widespread in the class action counties. Allegations identical to those here have been raised in many cases against HUD. See e.g., *Hills v. Gautreaux*, 425 U.S. 284, 96 S.Ct. 1538, 47 L.Ed.2d 792 (1976); *Clients' Council v. Pierce*, 711 F.2d 1406 (8th Cir.1983); *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971); *Cohen v. Public Housing Administration*, 257 F.2d 73 (5th Cir.1958); *Heyward v. Public Housing Administration*, 238 F.2d 689 (5th Cir.1956). Supplementary to allegations brought in the course of litigation, HUD received notice that the procedures designed to enforce Title VI were not being followed. This notice was contained in the 1977 Civil Rights Division Interagency Survey, which found that HUD had failed in its Title VI enforcement duties. That document refers to HUD's own admission, in its fiscal year 1974 budget submission, that it "had never adequately met its Title VI obligations" and

9. "O foolish people, and without understanding; which have eyes and see not; which have ears,

and hear not." 5 Jeremiah 21.

had completed reviews of only 120 of its 12,000 recipients that year. Interagency Survey, *supra*, at 28. The survey also cites a 1976 Memorandum to all HUD regional administrators from James H. Blair, Assistant Secretary of HUD Fair Housing and Equal Opportunity ("FHEO"), which states that "because our past record of Title VI enforcement does not adequately meet the mandate of the statute, it is imperative that a marked improvement in compliance and enforcement be demonstrated" *Id.*

Auxiliary information about the generally segregated nature of public housing was available to HUD through a number of major public events, such as the issuance of President Kennedy's Executive Order 11063, banning racial discrimination in federally funded programs, and from the passage of Titles VI and VIII. In particular, the passage of Title VIII was a recognition by the Congress that problems of discrimination existed in public housing throughout the nation. Senator Brooks, speaking in support of the Act, accused HUD of having an attitude of "amiable apartheid" and stated:

Rarely does HUD withhold funds or defer action in the name of desegregation. In fact, if it were not for all the printed guidelines the housing agencies have issued since 1964, one would scarcely know a Civil Rights Act had been passed. 114 Cong.Rec. 2281 (1968). As the facts of this action demonstrate, the same could be said at the present.

Defendants argue that any allegation of discriminatory intent is refuted by the mass of HUD regulations which contain declarations of intent not to discriminate. HUD cites no support for the proposition that publishing antidiscriminatory regulations is dispositive of the issue of intent. Nor could HUD do so, given that its officers have testified that they see no inconsistency between following these regulations and maintaining segregated housing. See *supra* pp. 30-31.

[10] HUD's intent to discriminate is established by the combination of HUD's disingenuous assertions of ignorance, its actual knowledge of segregation, and its continuing financial support of each public housing site in the class counties. In those instances where HUD responded at all to its knowledge of discrimination, it has been

only through the use of compliance agreements which have been shown by HUD's own data to be ineffective in dealing with discrimination. The picture which emerges from the undisputed facts in this action is nearly identical to that painted by the Court of Appeals for the Eighth Circuit in its examination of HUD's role in nurturing segregation in Texarkana, Arkansas:

In our view, the only reasonable inference that can be drawn is that HUD's actions were motivated at least in part by a discriminatory purpose. It is inconceivable that HUD would have so frequently acted to approve the [Texarkana Housing Authority's] actions for so long unless its officials held that view that segregation and discrimination were acceptable. The possible neutral explanations for the agency's actions concerning changes in the [Authority's] operation—a lack of resources or a desire to supply funds for low income housing—do not sufficiently negate the strong inference of discriminatory purpose that arises from the objective evidence contained in the agency's own files.

Clients' Council v. Pierce, 711 F.2d at 1423.

The facts in this action are highly similar to those which led to the conclusion of discriminatory intent quoted above. Defendants have made no attempt to distinguish *Clients' Council* from the case at bar; their extensive briefs make no reference to this opinion, and cite only the lower court opinion which the Eighth Circuit reversed. The court can find nothing in the record here that suggests a conclusion other than that reached in *Clients' Council*.

The record in this case clearly makes out defendant's violation of the Fifth Amendment to the United States Constitution. HUD has consistently supported and funded each project instituted under its aegis. HUD's inactivity has been limited to those aspects of its affirmative action responsibilities which might have an actual impact in desegregating federally funded housing. It has actively employed race-conscious policies which result in segregation. In the area covered by this action, those who have administered these projects have done so in a way clearly animated by racial prejudice. HUD has a duty to know how its money is spent, and in fact has known that it is supporting segregated housing in East

Texas. Notwithstanding, it has continued to actively support the system in perhaps the most effective possible way—by paying for it. HUD has thus played a crucial and continuing role in creating and maintaining a large system of publicly funded segregated housing.

Plaintiffs' Remaining Claims

[11-14] In addition to their constitutional claims, plaintiffs allege that HUD's conduct is also in violation of 42 U.S.C. §§ 1981 and 1982, as well as Titles VI and VIII. This court's finding that HUD had violated the Fifth Amendment, both through its knowing support of public housing authorities which intentionally discriminate, and through its own acts of intentional discrimination, is dispositive of the question of liability under §§ 1981 and 1982. *General Building Contractors Association, Inc. v. Pennsylvania*, 458 U.S. 375, 391, 102 S.Ct. 3141, 3150, 73 L.Ed.2d 835 (1982) (equating standard for violation of § 1981 and the Equal Protection Clause of the Fourteenth Amendment); *Memphis v. Greene*, 451 U.S. 100, 131, 101 S.Ct. 1584, 1602, 67 L.Ed.2d 769 (1981) (White, J. concurring) (purposeful discrimination clearly violates § 1982). It is obvious that intentional discrimination also violates Title VIII, 42 U.S.C. § 3608(c) ("All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this Title and shall cooperate with the Secretary to further such purpose."). In its order certifying the class, this court held that there is an implied private right of action under Title VI. Title VI imposes a duty on HUD to eliminate racial discrimination from the programs it funds. This court's finding that HUD has not done so, but has, on the contrary, deliberately nurtured this discrimination, as well as engaging in discrimination itself, shows that HUD has violated Title VI.

[15] Defendants concede that plaintiffs need not pursue administrative avenues before bringing suit under the Fifth Amendment and §§ 1981 and 1982. HUD argues, however, that plaintiffs cannot pursue their Title VI claim in this forum because they have failed to exhaust their administrative remedies, set out in HUD regulations, 24

CFR § 1.7. That regulation reads, in pertinent part:

§ 1.7 Conduct of Investigations.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this Part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint....

(c) Investigations. The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part 1.

Counsel for plaintiffs sent a written complaint to defendant in 1979. This complaint stated, *inter alia*, "HUD-supported rental housing in East Texas is thoroughly racially segregated. This has always been the case. HUD knows of this pattern, HUD does take measures to attempt to correct the situation, but usually blames the situation on the local authorities, landlords and tenants saying this is the way they want it." The letter refers to the area of the class action counties only. Letter to Gordon Lewis, Office of Area Counsel, HUD (October 9, 1979). (Exhibit attached to Statman Deposition.) Thus HUD was presented with a complaint, containing substantially the allegations of this law suit, in the year before this action was filed. HUD does not allege that it instituted a "prompt investigation" of these allegations, as required by 24 C.F.R. § 1.7(c). As a factual matter, therefore, the plaintiff class *did* exhaust its administrative remedies.

[16] Even if the letter of October 9, 1979, were not considered a complaint of discrimination, the same result would obtain. There can be no exhaustion requirement here, because it is "clear beyond doubt that the relevant administrative agency [in this case] will not grant the relief in question." *American Federation of Government Employees v. Acree*, 475 F.2d 1289, 1292 (D.C.Cir.1973), (citing *Montana National Bank of Billings v. Yellowstone County*, 276 U.S. 499, 505, 48 S.Ct. 331, 333, 72 L.Ed. 673 (1928)); see also *Rios v. Read*, 480 F.Supp. 14, 20 (E.D.N.Y.1978); *NAACP v. Wilmington*, 426 F.Supp. 919, 924 (D.Del.1977). The relief sought in this action is the disestablishment of segregated public housing in the class counties.

The record developed by the parties is replete with instances of violations of Title VI regulations having been brought to HUD's attention. HUD cannot point to a single occasion where such information furnished to it has resulted in integration. Defendant is disingenuous in asserting that plaintiffs should be forced to go through a proven "exercise of futility." *Lodge 1858, American Federation of Government Employees v. Pierce*, 436 F.2d 882, 896 (D.C.Cir.1970), quoted in *American Federation*, 475 F.2d at 1292, in the hopes that it will, for the first time, prove effective. This is especially true when HUD's own officials in charge of the Title VI review process in East Texas have testified, in depositions submitted by the parties, that in their view Title VI's requirements are satisfied whenever federal funding recipients carry out HUD procedures properly, and that HUD has no power or authority to seek actual desegregation, see *Chaires Deposition* at 124-125; *Eubanks Deposition* at 23-24. Since plaintiffs seek more than the paper relief available through HUD procedures, there can be no requirement that these procedures be exhausted.

[17, 18] Defendants further argue that this action is blocked by the doctrine of sovereign immunity. Sovereign immunity does not bar a suit to enjoin unconstitutional actions by a federal officer. *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 690-91, 69 S.Ct. 1457, 1461-62, 93 L.Ed. 1628 (1948). Plaintiffs here allege and show that HUD's conduct violates the Fifth Amendment, and therefore a host of federal statutes designed to prevent discrimination by federal officers. See *Dugan v. Rank*, 372 U.S. 609, 621-22, 83 S.Ct. 999, 1006-07, 10 L.Ed.2d 15 (1962); *Gatreaux v. Romney*, 448 F.2d 731, 735 (7th Cir.1971), and cases cited therein.

In addition, 5 U.S.C. § 702 explicitly authorizes the type of action against federal agencies which the plaintiffs have brought. That section reads, in pertinent part:

An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein denied on the ground that it is against the United States....

5 U.S.C. § 702.

The legislative history suggests that the language excerpted above, which was contained in the 1976 amendment to § 702, was intended to block the use of the sovereign immunity defense in actions seeking equitable relief against the government: "[T]he time has now come to eliminate the sovereign immunity defense in all equitable actions for specific relief against a Federal agency or officer acting in an official capacity." H.R.Rep. No. 1656, 94th Cong., 2d Session, reprinted in 1976 U.S.Code Cong. & Ad.News 6121, 6129. The Court of Appeals for the Fifth Circuit has held that "the 1976 amendment to [§ 702] waives sovereign immunity for actions against federal government agencies, seeking non-monetary relief, if the agency conduct is otherwise subject to judicial review." *Sheehan v. Army and Air Force Exchange Service*, 619 F.2d 1132, 1139 (5th Cir.1980), rev'd in part on other grounds, 456 U.S. 728, 102 S.Ct. 2118, 72 L.Ed.2d 520 (1982). See also *B.K. Instruments Inc. v. U.S.*, 715 F.2d 713, 724-25 (2nd Cir.1983); *Schnapper v. Foley*, 667 F.2d 102 (D.C.Cir. 1981); *Newsom v. Vanderbilt University*, 653 F.2d 1100, 1107 (6th Cir.1981); *Beller v. Middenhorf*, 632 F.2d 788, 797 (9th Cir. 1980); *Jaffee v. United States*, 592 F.2d 712, 718-19 (3rd Cir.1979).

HUD relies heavily on *Council for the Blind v. Regan*, 709 F.2d 1521 (D.C.Cir. 1983), to support the agency's argument of sovereign immunity. In *Council for the Blind*, two individuals and seven organizations challenged the way in which the Office of Revenue Sharing, pursuant to the Act, gave "no-strings" block grants to state and local governments. Plaintiffs alleged that localities used the grant money discriminatorily. The court found that Congress, under the Act, had not authorized a private cause of action, and held that the agency action was only reviewable under the Administrative Procedure Act. *Id.* at 1525. The court in *Council for the Blind* stressed, however, that the grants at issue were made "without strings"—that is, without the kind of regulations and monitoring at issue in the action at bar—and that Title VI was not implicated. *Id.* at 1531 n. 69. HUD's funds do have strings attached: their recipients are forbidden to engage in discrimination by HUD's Title VI regulations. Nor is it clear that *Council for the Blind* has any relevance to the

issue of sovereign immunity. The opinion in that action makes no reference to sovereign immunity. Rather, it refuses to find an implied cause of action under the Revenue Sharing Act of 1972. In contrast, there are numerous well-settled causes of action in the case at bar. None of these are blocked by the doctrine of sovereign immunity.

Standing

Defendants argue that plaintiffs lack standing to bring this action. The question of standing was discussed at length in this court's order certifying the class in this action, *Young v. Pierce*, 544 F.Supp. 1010, 1019-27 (E.D.Tex.1982). Defendants' arguments will be discussed only to the extent that they are based on developments in the law since this court's earlier order.

[19] HUD argues that plaintiffs cannot seek injunctive relief because they cannot show a threat that their past injuries will be repeated in the future. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). Defendants draw an interesting parallel between their former Title VI enforcement activities and the choke-hold used by Los Angeles police officers in *Lyons*. While there may be similarities between the two practices, the concerns of the *Lyons* Court are not apposite here. It is clear that plaintiffs' injuries are systemic, longstanding, and ongoing, and there is an obvious threat that these injuries—that is, segregated housing—will continue in the future. Indeed, this appears to be a virtual certainty, if HUD is left to its own devices. The Court in *Lyons* held that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing adverse effects." *Id.* at 102, 103 S.Ct. at 1665 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96, 94 S.Ct. 669, 676, 38 L.Ed.2d 674 (1974)). Since such "continuing adverse effects" in the form of a system of segregated housing are clearly present here, plaintiffs have standing to seek injunctive relief.

Defendants also rely on *Allen v. Wright*, 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984), in arguing that plaintiffs here lack standing. In *Allen*, parents of black school children brought a nationwide class action against the Internal Revenue Ser-

vice. Plaintiffs alleged that the IRS had not adopted sufficient standards and procedures to fulfill its duty to deny tax-exempt status to racially discriminatory private schools, and argued that the IRS's practices harmed their children by frustrating federal efforts at school desegregation and thereby reducing the quality of the public school education their children received. The plaintiffs did not "allege that their children have been the victims of discriminatory exclusion from the schools whose tax exemptions they challenge as unlawful." *Id.* Nor did the plaintiffs allege that their children had applied or would apply to the schools. *Id.* Justice O'Connor, writing for a four-justice plurality, found that under these facts the plaintiff class lacked standing.

The distinguishing features of the case at bar are manifest. The plaintiffs here have alleged—and shown—that they are the victims of discriminatory segregation. The plaintiff class includes residents of segregated housing, as well as all those who may apply for this housing. The *Allen* case makes clear the validity of plaintiffs' standing.

Scope of Review

HUD argues that its Title VI and VIII actions can only be reviewed under the Administrative Procedure Act, 5 U.S.C. § 551 and § 701. Defendants claim that the appropriate scope of review of their actions are the "arbitrary and capricious standard" contained in the Act, 5 U.S.C. § 706(2)(A). The court finds it unnecessary to decide whether review of these claims is governed by the APA, as HUD's actions are clearly in violation of Titles VI and VIII, even under the most generous standards of review. *Clients' Council v. Pierce*, 711 F.2d 1406, 1425 (8th Cir.1983).

Mootness

[20] The party urging mootness bears the heavy burden of demonstrating that discontinuance of the challenged activity has destroyed any controversy between the parties. *Vitek v. Jones*, 445 U.S. 480, 487, 100 S.Ct. 1254, 1260, 63 L.Ed.2d 552 (1980); *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 1383, 59 L.Ed.2d 642 (1979); *United States v. W.T. Grant*, 345 U.S. 629, 73 S.Ct. 894, 97 L.Ed. 1303 (1953). Part of this burden includes the

necessity of showing that there are no present effects of past conduct that require undoing. *Zablocki v. Redhail*, 434 U.S. 374, 382 n. 9, 98 S.Ct. 673, 679 n. 9, 54 L.Ed.2d 618 (1978); *Firefighters Local Union No. 1724 v. Stotts*, 467 U.S. 561, 104 S.Ct. 2576, 2582-2584, 81 L.Ed.2d 483, 492-495 (1984). Neither the granting of specific relief against a HUD public housing authority nor HUD's promise to stop any further discriminatory acts moots a case alleging independent violations of HUD's duties. *Gautreaux v. Romney*, 448 F.2d 731, 735-36 (7th Cir.1971).

[21] HUD's claim of mootness is based on an affidavit of HUD's General Counsel, John Knapp, the allegations of which have been set out above. See *supra* p. 32. While this affidavit alleges the institution

of a plan by HUD to transfer over-and-under-housed tenants, and to create an agenda for further desegregation, it does not even aver that HUD's housing has been desegregated. It alleges only that it has begun a process which may lead to desegregation. While these efforts may be relevant to the issue of appropriate remedy, it is clear that the effects of past discrimination still burden the plaintiff class. The action is not moot. It is therefore

ORDERED that plaintiffs motion for summary judgment on the issue of liability shall be, and it is hereby, GRANTED. It is further

ORDERED that defendants' motions for summary judgment, to decertify the class and to modify the class shall be, and they are hereby, DENIED.

APPENDIX

The following is a breakdown of racial occupancy in housing project sites for which HUD has supplied racial occupancy data, organized by county and town. Information on Hispanic occupancy is given where applicable.

Following the name of each of the class action counties is the percentage of that county's population living under the poverty level which is black, according to the 1980 U.S. Census.

	Percentage Black	Percentage White	Percentage Hispanic
<u>Anderson County</u> (poverty population 45% black):			
Palestine			
Dogwood Gardens (I-A)	6.3	93.7	—
Mt. Vernon Manor (I-A)	96.7	3.3	—
Pine Valley Apts. (I-A)	4.2	95.8	—
<u>Angelina County</u> (poverty population 40% black):			
Diboll			
Tex 229-1	56	27	17
Tex 229-2	53.1	14.1	22.8
Tex 229-3	59.2	4.1	36.7
Tex 229-4	2.3	96.6	1.1
Walter Allen (221)(d)(3))	100	0	—
Huntington			
HHA	0	100	—
Lufkin			
Royal Oaks § 8 New	11.4	88.6	—
Chestnut Park § 8 New	68	34*	—
Pinewood Park	97.8	2.2	—
The Arrangement (I-A)	2.4	97.6	—
Timber Ridge	2.1	97.9	—
<u>Bowie County</u> (poverty population 50% black)			
DeKalb			
Tex 137-1 North	83	17	—
Tex 137-1 Rutherford	0	100	—

* Figures do not always add up to 100% because of the presence of other minority groups living in the

housing projects, who are not specifically listed in the statistics.

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	Percentage Black	Percentage White	Percentage Hispanic
Tex 137-2	100	0	—
Tex 137-3 Cooper 1	90	10	—
Tex 137-3 Cooper 2	0	100	—
Maud			
Tex 188-1A	0	100	—
Tex 188-1B	100	0	—
Tex 188-2	25	75	—
New Boston			
Tex 54-1	14	86	—
Tex 54-2	100	0	—
Tex 54-3A	11	89	—
Tex 54-3B	100	0	—
Tex 54-3C	0	100	—
Tex 54-4	2	98	—
Tex 54-6	55	45	—
Tex 54-7	43	43	14
Texarkana			
Family Units:			
Tex 14-1	97.5	2.5	—
Tex 14-2	97.4	2.6	—
Tex 14-3	100	0	—
Tex 14-5	74	26	—
Elderly Units:			
Tex 14-1	92.9	7.1	—
Tex 14-2	100	0	—
Tex 14-7 Pine St.	22.7	77.3	—
Tex 14-7 Wood St.	60	50	—
Tex 14-7 Akin St.	0	100	—
Tex 14-7 Allen St.	36.4	63.6	—
Tex 14-8	17.2	79.3	3.5
Town North Apt. (236, Rent Supp.)	42.4	57.6	—
Sunset Apts. (221(dX3), Rent Supp.)	100	0	—
Quail Creek (I-A)	4.1	95.9	—
Tanglewood Terrace (I-A)	6.7	93.3	—
Woodridge Apts. (I-A)	5.7	94.3	—
<u>Camp County</u> (poverty population 56% black)			
Pittsburgh			
Tex 49-1	0	100	—
Tex 49-2	100	0	—
<u>Cass County</u> (poverty population 46% black)			
Linden			
North Side of Hwy. 155	0	100	—
South Side of Hwy. 155	100	0	—
Hughes Springs			
Tex 112-1 #1	5	95	—
Tex 112-1 #2	0	100	—
Tex 112-2	100	0	—
Patman Switch & 8 New	70.7	29.3	—
<u>Cherokee County</u> (poverty population 40% black)			
Alto			
272-1	20	80	—

APPENDIX—Continued

	Percentage Black	Percentage White	Percentage Hispanic
272-2	13	87	—
272-3	10	90	—
<u>Jacksonville</u>			
Travis Towers Apt. § 8 New	2.3	97.7	—
Sunnydale Apt. (221(dX3), Rent Supp.)	12.6	87.6	—
Sweet Union Apt. (221(dX3), Rent Supp.)	98.8	1.2	—
<u>Delta County</u>			
<u>Cooper</u>			
Tex 76-1 Hwy. Village	6.5	93.6	—
Tex 76-1 NE 5th St.	100	0	—
Tex 76-2	21.7	78.3	—
<u>Franklin County (poverty population 6% black)</u>			
<u>Mt. Vernon</u>			
Site 1	0	100	—
Site 2	70.9	29.1	—
<u>Gregg County (poverty population 47% black)</u>			
<u>Gladewater</u>			
Tex 58-1	100	0	—
Tex 58-2	100	0	—
Tex 58-3 Greenway Terrace	42	58	—
Tex 58-3 Pacific Gardens	19	81	—
Tex 16-R000-018 § 8 New	12	88	—
<u>Longview</u>			
Eden Place § 8 New	2.5	97.5	—
Hillside Village § 8 New	3	97	—
Ware Meadows § 8 New	39	61	—
Bellaire Manor (221(dX3), Rent Supp.)	100	0	—
Penwood Apts. (236, BMIR)	11	89	—
Jerusalem Trust (221(dX3), Rent Supp.)	100	0	—
Briar Meadows (I-A)	17.9	82.1	—
Lake Pine City (I-A)	17.3	82.7	—
Sunflower East (I-A)	10	90	—
<u>Hardin County (poverty population 34% black)</u>			
<u>Silabee</u>			
Prince Hall Villa (I-A)	98	0	—
<u>Harrison County (poverty population 65% black)</u>			
<u>Marshall</u>			
Bellaire Manor (221(dX3), Rent Supp.)	100	0	—
Pine Haven Apts. (236 BMIR)	35	65	—
Season Keys (236 BMIR)	50.1	49.9	—
Ward Plaza Apts. (221(dX3), Rent Supp.)	100	0	—
<u>Waskom</u>			
Waskom Arms (236 BMIR)	24	76	—

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	Percentage Black	Percentage White	Percentage Hispanic
<u>Henderson County</u> (poverty population 26% black)			
Athens			
New Haven Apts. (221(d)(3))	73	27	—
Malakoff			
Tex 209-1	0	100	—
Tex 209-2	100	0	—
Trinidad			
Tex 237-1 First St.	0	100	—
Tex 237-1 Lincoln St.	17	33	—
Tex 237-1 Birdsong St.	100	0	—
Tex 237-2	0	100	—
<u>Hopkins County</u> (poverty population 21% black)			
Como			
1 Site	0	100	—
Cumby			
1 Site	0	100	—
Sulphur Springs			
CME Open Village Apts. (I-A)	98	2	—
<u>Houston County</u> (poverty population 60% black)			
Crockett			
Tex 222-1 Lewis Circle	98	2	—
Tex 222-1 Sallas Avenue	0	100	—
Tex 222-1 Second Avenue	100	0	—
Tex 222-1 Dudson Dr.	88	12	—
Tex 222-2	100	0	—
Prince Hall Manor (I-A)	100	0	—
Grapeland			
Tex 295-1	100	0	—
Tex 295-2	0	100	—
<u>Jasper County</u> (poverty population 43% black)			
Kirbyville			
Tex 282-1 Levert	0	100	—
Tex 282-1 Lanier	100	0	—
Tex 282-2 Levert	6.3	93.7	—
Jasper			
Pineview Apts. (221(d)(3)) § 8	87.6	12.4	—
<u>Jefferson County</u> (poverty population 63% black)			
Baumont			
Neches Park	100	0	—
Magnolia Gardens	93	7	—
Concord Homes	100	0	—
Lucas Gardens (Elderly)	4	96	—
Grand Pine Courts (Elderly)	100	0	—
Northridge Manor § 8 New	92	8	—
Raintree Tower	20	80	—
Park Shadows § 8 New	28.7	71.3	—
Seville Apts. § 8 New	1.2	98.8	—
Plymouth Village (221(d)(3), Rent Supp.)	98	12	—

APPENDIX—Continued

	Percentage Black	Percentage White	Percentage Hispanic
Sunlight Manor (221(d)(3), Rent Supp.)	99.2	.8	—
Virginia Manor § 236 Rent Supp.	99.09	.9*	—
Washington Manor § 236 Rent Supp.	100	0	—
Central Apartments (I-A)	7.66	92.5	—
Hollywood Courts (I-A)	100	0	—
Hirote Apts. (I-A)	16.7	66.7	16.6
Lincoln Apts. (I-A)	100	0	—
Lyleden Apts. (I-A)	33.3	66.7	—
Northway Arms	6.3	93.7	—
Northway Place Apts.	5.6	94.4	—
Nederland			
Courtney House Apts. § 8 New	3.2	96.8	—
Port Arthur			
Louis Manor 221(d)(3)	100	0	—
Prince Hall 221(d)(3)	100	0	—
Foster Village (I-A)	3.7	90.3	6
Griffin Park (I-A)	16.9	88.9	4.2
Jefferson Apts. (I-A)	57.6	42.4	—
Villa Main Apts. (I-A)	13.8	96.2	—
Stonegate Manor (I-A)	2.5	94.1	3.4
Graves			
Beverly Place	42.7	57.3	—
Gulfway Provincial	4.2	94.1	1.7
Port Neches			
Ridgewood Manor	0	94.8	5.2
<u>Lamar County (poverty population 37% black)</u>			
Blossom			
West Division St.	0	100	—
Deport			
1 Site	0	100	—
Paris			
Tex 48-2	100	0	—
Tex 48-1	13.2	86.8	—
Park Gardens N. (236 BMTR)	97	3	—
Roxton Arms 221(d)(3)	0	100	—
<u>Liberty County (poverty population 31% black)</u>			
Cleveland			
198-1 A	0	100	—
198-1 B	100	0	—
198-1 C	100	0	—
198-1 A-Elderly	0	100	—
198-1 B-Elderly	100	0	—
Park Place Apts. § 8 New	10.2	89.8	—
<u>Marion County (no census data available)</u>			
Jefferson			
TX 44-1	0	100	—
TX 44-2	100	0	—

YOUNG v. PIERCE

Cite as 628 F.Supp. 1037 (E.D.Tex. 1985)

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APPENDIX—Continued

	Percentage Black	Percentage White	Percentage Hispanic
<u>Morris County (poverty population 53% black)</u>			
<u>Daingerfield</u>			
Tex 106-1	0	100	—
TX 106-2	100	0	—
TX 106-3(a)	0	100	—
TX 106-3(b)	100	0	—
<u>Naples</u>			
Tex 121-1 West	0	100	—
Tex 121-1 East	100	0	—
Tex 121-2 West	0	100	—
Tex 121-2 East	100	0	—
Tex 121-3 West	0	100	—
Tex 121-3 East	100	0	—
Tex 121-4	0	100	—
Tex 121-5	0	100	—
<u>Omaha</u>			
Tex 122-1 3rd St.	0	100	—
Tex 122-1 School St.	100	0	—
Tex 122-2 Sloss Ave.	0	100	—
Tex 122-3 Sloss Ave.	0	100	—
Tex 122 Cartwright	100	0	—
Tex 122-4 Sloss Circle	10	90	—
Tex 122-5 Sloss St.	0	100	—
Cartwright	100	0	—
<u>Nacogdoches County (poverty population 33% black)</u>			
<u>Garrison</u>			
1001 Francis	0	100	—
Cedar St.	100	0	—
<u>Nacogdoches</u>			
<u>Nacogdoches Handicapped § 8</u>			
New	8.3	91.7	—
Pine Lakes Estates § 8 New	11.2	88.8	—
Northridge Arms (I-A)	0	100	—
Eastwood Terrace (221(d)(3)), § 8	100	0	—
Oak Hill Plaza (221(d)(3)), § 8	100	0	—
<u>Newton County (poverty population 54% black)</u>			
<u>Newton</u>			
Tex 223-1 Didrikson	0	100	—
Tex 223-1 Odom Homes	100	0	—
Tex 223-2	75	25	—
<u>Orange County (poverty population 27% black)</u>			
<u>Orange County Housing Authority</u>			
West Orange	0	100	—
Bridge City	0	100	—
Cone	0	100	—
Vidor-1	0	95	5
Vidor-2	0	96	4
<u>Orange City</u>			
37-1	22.6	77.4	—
37-2-3	97.1	2.9	—
37-4A	96	4	—
37-4B	25	75	—

APPENDIX—Continued

	Percentage Black	Percentage White	Percentage Hispanic
Heritage Center § 8 New	3.4	96.6	—
Chivas Square (I-A)	5.8	93.2	1
<u>Panola County (poverty population 47% black)</u>			
Beckville			
1 Site	6.3	93.7	—
<u>Polk County (poverty population 34% black)</u>			
Corrigan			
N. West St.	73	9	18
S. West St.	100	0	—
W. Second	0	100	—
Hospital Site	0	100	—
Central	0	100	—
Livingston			
Site 1	33	67	—
Site 2	55	45	—
Hudman Addition § 8 New	1.3	98.7	—
<u>Red River County (poverty population 38% black)</u>			
Avery			
1 Site	0	100	—
Bogota			
1 Site	0	100	—
Clarksville			
Site 1	0	100	—
Site 2	100	0	—
Site 3	100	0	—
Detroit			
250-1	0	93.8	6.2
250-2	21	79	—
<u>Rusk County</u>			
Henderson			
Tex 50-1	76	24	—
Tex 50-2	100	0	—
Tex-16-E050-001 DEL 1975, § 8 Existing	14	86	—
Overton			
Tex 68-1 Ward	0	100	—
Tex 68-1 Carver	100	0	—
Tex 68-2 North	0	100	—
Tex 68-2 Missouri Pacific	100	0	—
Tex 68-3	27.8	72.2	—
<u>San Augustine County (poverty population 63% black)</u>			
San Augustine			
Sunset Hills (I-A)	100	0	—
<u>Sabine County (poverty population 33% black)</u>			
Hemphill			
Site A	22	78	—
Site B	100	0	—
Pineland			
187-1 Knighton	100	0	—
187-1 Beach	62.5	37.5	—

YOUNG v. PIERCE
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APPENDIX—Continued

	Percentage Black	Percentage White	Percentage Hispanic
187-2 Denning	100	0	—
187-2 Dogwood	0	100	—
187-2 Cherry	0	100	—
187-3	0	100	—
<u>Shelby County (poverty population 40% black)</u>			
<u>Center</u>			
Union Acre Trust (221(DX3)			
Rent Supp.)	96.9	3.1	—
<u>Tenehaha</u>			
Tex 262-1 A	100	0	—
Tex 262-1 B	0	100	—
Tex 262-1 C	0	100	—
Tex 24 R000-001 § 8 New #1	44	56	—
Tex 24 R000-001 § 8 New #2	12	82	6
<u>Timpson</u>			
Site A	5	95	—
Site B	0	100	—
<u>Smith County (poverty population 49% black)</u>			
<u>Tyler</u>			
Tyler Square § 8 New	30.9	69.1	—
William Booth Garden	2.3	97.1	—
Liberty Arms (I-A)	100	0	—
Texas College Garden	100	0	—
Village East (I-A)	100	0	—
Casa Granda (I)	6.3	93.7	—
1717 Shiloh (I)	6.5	93.5	—
The Seasons	0	100	—
Hearthstone Nursing Home	1	99	—
Mel-Rose Convalescent	92.8	7.2	—
112-350-67-PM	100	0	—
<u>Troup</u>			
Liberty Plaza	89.5	10.5	—
<u>Titus County (poverty population 31% black)</u>			
<u>Mt. Pleasant</u>			
Capers	32.4	67.6	—
Stark	4.7	95.3	—
<u>Talco</u>			
1 Site	0	100	—
<u>Tyler County (poverty population 28% black)</u>			
<u>Woodville</u>			
225-1 Pecan	0	100	—
225-1 Elm	0	100	—
225-1 Shivers	100	0	—
<u>Upshur County (poverty population 38% black)</u>			
<u>Big Sandy</u>			
Site A	12	88	—
Site I	44	56	—
<u>Gilmer</u>			
Tex 71-1	0	100	—
Tex 71-2	100	0	—

APPENDIX—Continued

	Percentage Black	Percentage White	Percentage Hispanic
<u>Van Zandt County (poverty population 8% black)</u>			
Edgewood			
Site B	0	100	—
Site C	0	100	—
Site E	31.3	43.7	25
Site F	0	100	—
Fruitvale			
1 Site	0	100	—
Grand Saline			
1 Site	0	100	—
Van			
1 Site	0	100	—
Wills Point			
Site 1	0	100	—
Site 2	100	0	—
<u>Wood County (poverty population 16% black)</u>			
Alba			
1 Site	0	100	—
Winnsboro			
Elderly	0	100	—
Regular	20	80	—



U. S. Department of Housing and Urban Development
Washington, D.C. 20410-2000

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY September 2, 1994

MEMORANDUM FOR: PHEO Office Directors, Enforcement Directors,
Compliance Directors, Staff, Office of
Investigations

FROM: *Roberta Achtenberg*
Roberta Achtenberg, Assistant Secretary for
Fair Housing and Equal Opportunity

SUBJECT: Substantive and Procedural Limitations on
Filing and Investigating Fair Housing Act
Complaints That May Implicate the First
Amendment

This memorandum sets forth specific substantive and procedural restrictions regarding the filing and investigation by the Department of complaints under the Fair Housing Act (the Act) that may involve issues relating to the protections guaranteed by the First Amendment to the United States Constitution.¹

It provides guidance to field and Headquarters staff concerning the appropriate handling of any matter involving third parties, such as neighbors who are not directly participating in real estate transactions, who are alleged to have violated Section 818 of the Act, which makes it unlawful to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment" of rights under the Act.

¹ The Department well recognizes that there may be disagreement with the Department's decision not to accept complaints in certain categories of cases outlined in this guidance. This guidance is not meant to circumscribe the right of any individual who believes that his/her rights under the Fair Housing Act have been violated to seek redress through private legal action. Nevertheless, the Department recognizes that the power and resources of the state are unique and that, for many private citizens, being the subject of a "federal investigation" can be inherently and unavoidably "chilling." Where activities that on their face implicate the protections of the First Amendment are the subject of a complaint, the Department chooses to err on the side of the First Amendment. The Department believes that the primacy of the First Amendment, which guarantees full and unfettered discussion in the political forum, weighs against the initiation of investigations of those activities by the federal government except under the conditions set out in this memorandum.

Absent force, physical harm, or a clear threat of force or physical harm to one or more individuals,² public activities directed toward achieving action by a governmental entity or official -- even where hostile, distasteful, and/or bigoted -- can be part of a robust discussion of public issues. Activities to urge governmental action are an essential part of a constitutional democracy.

Thus, this Department will not accept for filing or investigate any complaint under Section 818 that involves public activities that:

- are directed toward achieving action by a governmental entity or official; and
- do not involve force, physical harm, or a clear threat of force or physical harm to one or more individuals.

Examples of the types of public activities that are "directed toward achieving action by a governmental entity or official" and are covered by these guidelines include:

- distributing fliers, pamphlets, brochures, posters, or other written materials to the public at large;
- holding open community or neighborhood meetings;
- writing articles or letters to the editor or making statements in a newspaper;
- conducting peaceful demonstrations;
- testifying at public hearings; and
- communicating directly with a governmental entity concerning official governmental matters.³

Moreover, in order to ensure that the Department's investigative process does not interfere with protected rights under the First Amendment, no complaint alleging a violation of Section 818 may be filed absent prior formal approval from Headquarters.

² This memorandum in no way affects the Department's practice of referring certain complaints involving threats of violence to the Department of Justice for possible criminal prosecution.

³ This does not include litigation filed in courts. Procedures for complaints alleging the filing of frivolous litigation are discussed separately in this memorandum.

Finally, this memorandum details a number of procedural safeguards designed to insure that, when investigations do proceed, they are conducted promptly and in a manner that does not interfere or chill in any way the rights of individuals to engage in speech protected by the First Amendment.

The Law

This Department must always act with great respect for the constitutional protections embodied in the First Amendment, including the rights to freedom of speech, press, and religion, and the right to petition peaceably the government for redress of grievances. Where Fair Housing Act concerns intersect with First Amendment protections, the deference required under the First Amendment to protected activities requires that the Department not engage in investigation of certain behavior which, although alleged to be discriminatory, is nonetheless clearly protected by the First Amendment.

In other cases, when the facts available to the Department do not reasonably indicate the precise applicability of the First Amendment, the Department's investigations must be prompt and carefully tailored to be consistent with applicable First Amendment law and must cease where First Amendment protection is determined to apply. In any case, increased sensitivity to First Amendment protections must be the watchword of any investigative activity. The Department must make every effort to assure that its actions do not unduly chill the exercise of free speech rights.

It is clear that the Supreme Court has, in the civil rights context, determined that certain kinds of "speech" may constitutionally be prohibited because the speech is limited as part of a general prohibition against behavior which amounts to unlawful discrimination or interference with the exercise of civil rights. See R.A.V. v. City of St. Paul, 112 S. Ct. 2538 (1992); Wisconsin v. Mitchell, 113 S. Ct. 2194, 2200 (1993) (citing Roberts v. United States Jaycees, 468 U.S. 609, 628 (1984); Hishon v. King & Spalding, 467 U.S. 69, 78 (1984); Runyon v. McCrary, 427 U.S. 160, 176 (1976)).

The Fair Housing Act, therefore, constitutionally prohibits certain combinations of speech with behavior and speech itself that rises to the level of conduct. For example, where third parties, such as neighbors, engage in behavior, including speech, which is coercive, threatening, intimidating or harassing, the behavior may violate Section 818 of the Act. See, e.g., Sofarelli v. Pinellas County, 931 F.2d 718 (11th Cir. 1991); People Helpers Foundation v. Richmond, 781 F. Supp. 1132 (E.D. Va. 1992); HUD v. Johnson, HUDALJ 06-93-1316-8 (HUD Office of Admin. Law Judges 7-26-94); HUD v. Williams, 2 Fair Housing-Fair Lending (Prentice Hall), ¶ 25,007 (HUD Office of Admin. Law

Judges 2-18-93); HUD v. Weber, 2 Fair Housing-Fair Lending (Prentice Hall), ¶ 24,041 (HUD Office of Admin. Law Judges 2-18-93).

In order to ensure that First Amendment rights are not chilled, the steps detailed in this memorandum must be followed in any case involving alleged violations of Section 818 of the Act by third parties not directly involved in a real estate transaction.

Complaint Review

Allegations that public activities coerced, intimidated, threatened, or interfered with a person's exercise or enjoyment of rights under the Fair Housing Act will not be accepted for filing if those public activities:

- were directed toward achieving action by a governmental entity or official; and
- did not involve force, physical harm, or the threat of force or physical harm to one or more individuals.

Each case submitted for filing must be reviewed on its own facts. Examples of the types of public activities that are "directed toward achieving action by a governmental entity or official" include:

- distributing fliers, pamphlets, brochures, posters, or other written materials to the public at large;
- holding open community or neighborhood meetings;
- writing articles or letters to the editor or making statements in a newspaper;
- conducting peaceful demonstrations;⁴

⁴ In certain circumstances where such activities repeatedly occur in close proximity to a captive audience, such as in front of an individual's home, a claim under the Fair Housing Act may be cognizable. See, e.g., People Helpers Foundation v. Richmond, 781 F. Supp. 1132 (E.D. Va. 1992) (a course of harassment, which included neighbors organizing in front of a group home for persons with disabilities, using derogatory language to refer to the occupants, and photographing occupants and volunteers, stated a claim under Section 818). Because of the complexity of the legal analysis required in these cases, however, Intake staff are directed to refer allegations of this type to Headquarters immediately. No such complaint may be filed without prior written approval from Headquarters.

- testifying at public hearings; or
- otherwise communicating with a governmental entity concerning an official governmental matter.⁵

An intemperate and perhaps even hostile statement made at a zoning hearing that has the effect of making persons protected by the Fair Housing Act feel unwelcome in a neighborhood will not be sufficient for filing a complaint or beginning an investigation under the Fair Housing Act.

Furthermore, in order to assure maximum protection for freedom of speech, no complaint involving speech under Section 818 may be accepted for filing absent prior written approval from Headquarters.

Cases Involving Frivolous Litigation

Where the action alleged to be discriminatory is the filing or prosecution of a lawsuit, similar standards will apply. A lawsuit which is frivolous can be a violation of the Act. Sofarelli v. Pinellas County, 931 F.2d 718, 725 (11th Cir. 1991); Woods-Drake v. Lundy, 667 F.2d 1198, 1202 (5th Cir. 1982); Miller v. Towne Oaks East Apartments, 797 F. Supp. 557, 561-62 (E.D. Tex. 1992); U.S. v. Scott, 788 F. Supp. 1555, 1561 (D. Kan. 1992); Northside Realty Associates, Inc. v. Chapman, 411 F. Supp. 1195, 1199-1200 (N.D. Ga. 1976); HUD v. Grappone, 2 Fair Housing-Fair Lending (P-H), ¶ 25,059 (HUD Office of Admin. Law Judges 10-1-93); U.S. v. Robinson, 2 Fair Housing-Fair Lending (P-H), ¶ 15,881 (D. Conn. 1993) (Magistrate Judge's Opinion).

However, given the sensitivity and complexity of the issues relating to such litigation, all situations involving claims that litigation amounts to a violation of Section 818 must be cleared with Headquarters before the complaint is filed.

Investigatory Process

To avoid infringing upon protected speech, any investigation which may be necessary to obtain information about the extent to which the First Amendment may be applicable should be prompt, narrowly tailored to gather sufficient preliminary data to allow such a decision to be made, and conducted in close consultation with counsel. Headquarters must concur in the investigative plan for all cases relating to possible First Amendment issues before the investigation is conducted.

Where investigation is undertaken, particularly when the speech is on-going, great care must be taken to avoid chilling the First Amendment rights of the speakers. Such care must include, at a minimum, conducting an expedited investigation and

⁵ This does not include litigation filed in courts.

avoiding any direct or indirect interference with any on-going speech. Where possible, investigation of speech-related activity protected by the First Amendment should be conducted through public records, such as transcripts or tapes of hearings, newspaper records, or interviews of public decision makers, rather than interviews of the speakers or review of private correspondence.

Production of Documents

In no circumstances should document requests be made or a subpoena be served or threatened in an effort to acquire membership lists, fundraising information or financial data of an organization that is or may be engaging in protected speech activities.

Conciliation Efforts

In Section 810(b) of the Fair Housing Act, Congress mandated that conciliation efforts be made in every case, where feasible, from the initial date that a complaint is filed. Because the government carries special responsibilities under the First Amendment that private parties do not, special sensitivity to constitutional concerns must be demonstrated in the preparation and transmittal of conciliation proposals. Under no circumstances should the Department propose or transmit any proposals that would circumscribe the First Amendment rights of any party to the complaint.

By following these guidelines, the Department can be certain that any investigations that are conducted will not chill protected political speech in any manner. Questions regarding this guidance or specific situations should be addressed to Sara K. Pratt, Director, Office of Investigations at (202) 708-0836.



U.S. Department of Housing and Urban Development

San Francisco Regional Office, Region IX
 450 Golden Gate Avenue
 San Francisco, California 94102-3448

UNITED STATES OF AMERICA
 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United)
 States Department of)
 Housing and Urban)
 Development, on behalf of)
 Erlinda Sanchez and Armando)
 Sanchez,)
 Charging Parties)
 v.)
 David Fitzgerald, Kathryn)
 Fitzgerald, William De Rose)
 and Linda De Rose)
 Respondents.)

HUDALJ 09-93-2148-1

DETERMINATION OF REASONABLE CAUSE
AND CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about December 9, 1992, Complainants Erlinda and Armando Sanchez, aggrieved persons, filed a verified complaint with the United States Department of Housing and Urban Development (HUD). The complaint alleges that Respondents violated the Fair Housing Act by discriminating against complainants because of the handicap of the proposed residents of a group home they intend to operate in Bakersfield, California. See 42 U.S.C. § 3601-3619 (1989).

The Fair Housing Act authorizes the issuance of a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe a discriminatory housing practice has occurred. 42 U.S.C. §§ 3610(g)(1) and (2). The Secretary of HUD has delegated to the General Counsel who, in turn, has delegated to the Regional Counsel the authority to issue such charges. 56 F.R. 2931 (January 25, 1991). In the instant case, the Regional Counsel

has determined that reasonable cause exists to believe a discriminatory housing practice has occurred and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the above complaint, the Secretary has reasonable cause to believe that respondents have injured complainants by discriminating against them on the basis of the handicap of proposed residents of complainant's group home, in violation of 42 U.S.C. § 3604(f)(1)(B), (f)(2)(B), and (f)(3)(B). The allegations that support this charge of discrimination are as follows:

A. Legal Authority

1. It is unlawful to "make unavailable or deny a dwelling to any buyer or renter because of a handicap of . . . a person residing in or intending to reside in that dwelling after it is . . . made available." 42 U.S.C. § 3604(f)(1)(B).
2. It is unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of a handicap of . . . a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available." 42 U.S.C. § 3604(f)(2)(B).
3. Discrimination on the basis of handicap includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped person] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).
4. Handicap "with respect to a person is defined in the Act as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. § 3602(h)(1)(2)(3).

B. Parties

5. The complainants and aggrieved parties, Erlinda and Armando Sanchez, own the subject property located at 7604 Kroll Way in the residential community known as Stockdale Estates, in Bakersfield California.

6. Respondents David Fitzgerald, Kathryn Fitzgerald, William DeRose, and Linda DeRose are residential property owners in Stockdale Estates.

C. Factual Allegations

7. On or about May 12, 1992, complainants Erlinda and Armando Sanchez purchased the subject property (hereinafter referred to as the "Sanchez home" or "group home"). Complainants intend to open and operate the property as a residential care facility for six or fewer mentally or physically disabled adults. Prospective residents of the home have severe physical and mental impairments which limit their ability to perform everyday activities such as walking, speaking, and learning. Accordingly, the proposed residents of the subject property are handicapped persons as defined by the Act. 42 U.S.C. § 3602(h)(1)(2)(3).
8. The Sanchez home is licensed by California's Department of Health Services as a six-bed intermediate care facility for the developmentally disabled. To assure the right of the mentally and physically handicapped to live in normal residential surroundings, California law provides that such homes "shall be a permitted use in all residential zones . . . for single family dwellings." (Cal Wel. & Inst. Code §5116 para. 2)
9. Under California law, even if the home is occupied by persons who are unrelated:

. . . a residential facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operator of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, a residential facility which serves six or fewer persons shall not be included within the definition of a boarding housing, rooming housing, institution . . . or other similar term which implies that the residential facility is a

business run for profit or differs in any other way from a family dwelling.

(Cal. Health & Safety Code § 1566.3)

10. In preparation for opening the group home, complainants undertook substantial interior renovation to modernize the house, and render it handicap accessible.
11. Complainant has obtained all state and local licenses and permits necessary to operate the group home and in September, 1992 was ready to receive residents.
12. The Kern Regional Center, a private non-profit cooperation concerned with the treatment and housing of persons with physical and mental disabilities, assigned six of its disabled clients to the Sanchezes' facility. These persons, five of whom have filed complaints with HUD, were waiting to move into the home at the time of the discriminatory acts described herein.
13. The homes in Stockdale Estates are subject to a Declaration of Restrictions which provide that "no lot shall be used except for residential purposes." On or about July 13, 1993, prior to the opening of their group home, complainants received a letter from an attorney for the respondents. The letter expressed the concerns of the respondents and "virtually all of the property owners in Stockdale Estates with whom we have had contact" about the intended use of the property, and advised complainant that respondents were seeking a temporary restraining order preventing complainants from using the property in "any manner inconsistent with California law and the property rights of those individuals presently living in the Stockdale Estates area."
14. Prior to the planned opening of the group home, several residents of Stockdale Estates voiced opposition to the use of the property as a residential care facility for the disabled. Discriminatory statements about the future residents of the Sanchez home were made, including a statement from one resident who told a newspaper reporter "its going to affect property values. I don't care what they say. Its still an institution-- they're putting in special ramps and --doors."
15. Prior to the planned opening of the group home, an unsigned and undated flyer was circulated throughout Stockdale Estates. The flyer advised that children in

- the subdivision may be at risk from "mentally damaged" adults who were being moved into the Sanchez home.
16. On August 7, 1992, respondents obtained a preliminary injunction in the Superior Court for Kern County, California (Case No. 92-221138) prohibiting the complainants:
 - a. From using said residence at 7604 Kroll Way in any manner other than as for residential purposes as specified in the CC&R's
 - b. From housing any persons unrelated to the defendants at 7604 Kroll Way as a means of providing personal services, supervision, or assistance as a means of providing for their residential care whether for a fee or for profit, or otherwise, for example, as an intermediate care facility.
 17. The previous owner of the Sanchez home had a business license assigned to the residence.
 18. At the time that respondents were seeking to enjoin the opening of the Sanchez home, at least thirty (30) business licenses were issued to other homeowners in Stockdale Estates.
 19. Respondents have not claimed that business licenses issued to other residences in Stockdale Estates constitute a violation of the Declaration of Restrictions.
 20. Because of the temporary injunction, complainants have been unable to open their group home.

D. Fair Housing Act Violations

20. Respondents have made the subject property unavailable to complainants and the proposed residents of the house, because of the handicaps of these residents, in violation of 42 U.S.C.S 3604(f)(1)(B).
21. Respondents have selectively enforced the Declaration of Restrictions, taking legal action to prohibit what they contend is the "commercial activity" of the proposed group home while allowing other commercial activity in Stockdale Estates unrelated to handicapped persons to continue. As such, respondents have

discriminated against complainants in the terms, conditions, and privileges of use of a home in Stockdale Estates, based on the handicaps of the proposed residents of the group home, in violation of 42 U.S.C. § 3604(f)(2)(B).

22. In the alternative, a reasonable accommodation in the Declaration of Restrictions, allowing complainants to have paid staff at the group home is necessary to afford complainant and the proposed residents equal opportunity to use and enjoy the house. Respondents' failure to make such accommodation violates the Act, 42 U.S.C. § 3604(f)(3)(B).
23. As a result of the actions of respondents, complainants have suffered damages including economic loss, emotional distress, and the loss of an important housing opportunity.

III. FINAL INVESTIGATION REPORT

This Determination of Reasonable Cause and Charge of Discrimination is supported by evidence gathered by HUD investigators and documented in a Final Investigative Report. A copy of this Final Investigative Report will be provided to any aggrieved person or to any respondent upon written request for such.

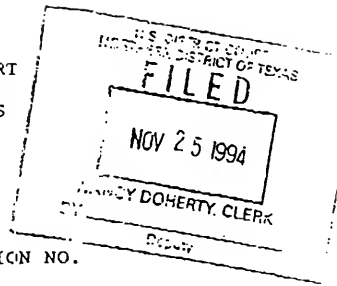
LaVera Gillespie, Director
Office of Fair Housing and Equal Opportunity
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, California, 94102
(415) 556-0800

IV. CONCLUSION

WHEREFORE, the Secretary of Housing and Urban Development, through the Office of the Regional Counsel and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Fair Housing Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 of the Act and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§3601-19;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF TEXAS



UNITED STATES OF AMERICA,

Plaintiff,

v.

W.J. and ANN WAGNER,
MRS. EDWARD D.W. HARDIN, TOM
and OLGA GRIFFIN, THOMAS E.
and DORIS H. BRENTS, ELEANORE
DIRKS, RAY TROUTMAN, VITO and
SONIA CIRACI,

Defendants.

CIVIL ACTION NO.

3-94CV2540-R

COMPLAINT

The United States of America alleges as follows:

1. This action is brought pursuant to Section 812(c) of the Fair Housing Act, as amended, 42 U.S.C. § 3612(o), by the United States on behalf of Edward and Nancy Pine.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3612(o).

3. Complainants Edward and Nancy Pine are residents of Tarrant County, Texas. In June, 1991, Complainants owned the single-family residence located at 6341 Juneau Road, Fort Worth, Texas, which is located in an area known as "Ridgmar". The house located at 6341 Juneau Road is a dwelling within the meaning of Section 802(b) of the Fair Housing Act, as amended, 42 U.S.C. § 3602(b).

4. Defendants are residents of Tarrant County, Texas. In June, 1991, each of the Defendants owned or lived in a single-family residence in the Ridgmar area of Tarrant County, Texas.

5. In June, 1991, the Pines contracted to sell their residence at 6341 Juneau Road to the Tarrant County Mental Health-Mental Retardation Association ("MHMR"). The MHMR intended to use the residence at 6341 Juneau Road as a group home for six unrelated children with mental retardation.

6. The intended residents of the group home to be operated by MHMR were individuals with handicaps within the meaning of Section 802(h) of the Fair Housing Act, as amended, 42 U.S.C. § 3602(h).

7. On or about July 1, 1991, Defendants filed a lawsuit in Texas state court intended to prevent the sale of the residence at 6341 Juneau Road to MHMR because of the handicap of the prospective residents. The lawsuit was captioned W.J. Wagner, et al. v. Edward Pine, et al., No. 48-136087-91. The lawsuit delayed the sale of the residence at 6341 Juneau Road to the MHMR. The lawsuit had no rational basis in law or fact and sought an illegal objective.

8. The Pines filed, pursuant to Section 810(a) of the Fair Housing Act, as amended, 42 U.S.C. § 3610(a), a complaint with the United States Department of Housing and Urban Development (hereinafter "HUD") on September 13, 1991, alleging that they had been discriminated against in the sale of their dwelling because

of the handicaps of the persons intending to reside in the dwelling after it was to be sold.

9. Pursuant to the requirements of Sections 810(a) and (b) of the Fair Housing Act, as amended, 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the Pines' complaint, attempted to conciliate without success, and prepared a final investigative report.

10. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices have occurred. Therefore, on October 19, 1994, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging that the Defendants had violated Section 818 of the Fair Housing Act, as amended, 42 U.S.C. § 3617.

11. On October 28, 1994, Defendants W.J. and Ann Wagner elected to have the charge resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).

12. The Secretary has authorized the Attorney General to commence a civil action on behalf of Edward and Nancy Pine pursuant to 42 U.S.C. § 3612(o).

13. Defendants, through their actions referred to in paragraph 7 above, have coerced, threatened, intimidated or interfered with Edward and Nancy Pine on account of their having aided or encouraged other persons in the exercise or enjoyment of

rights granted or protected by 42 U.S.C. § 3604(f), in violation of 42 U.S.C. § 3617.

14. The Pines are aggrieved persons as defined in Section 802(i) of the Fair Housing Act, as amended, 42 U.S.C. § 3602(i), and have suffered damages as a result of the actions of the Defendants.

15. The discriminatory actions of Defendants were intentional, willful and taken in disregard of the rights of Edward and Nancy Pine.

WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that the discriminatory housing practices of Defendants as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619;

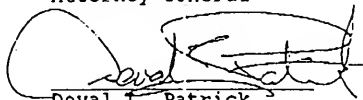
2. Enjoins Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating on account of handicap against any person in any aspect of the sale of a dwelling;

3. Awards such damages as will fully compensate Edward and Nancy Pine for their injuries occasioned by Defendants' denial of equal housing opportunity, pursuant to Sections 812(o)(3) and 813(c) of the Fair Housing Act, 42 U.S.C. §§ 3612(o)(3), 3613(c); and

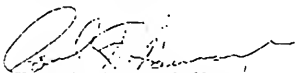
4. Awards punitive damages to Edward and Nancy Pine pursuant to Sections 812(o)(3) and 813(c) of the Fair Housing Act, 42 U.S.C. §§ 3612(o)(3), 3613(c).

The United States further prays for such additional relief as the interests of justice may require.

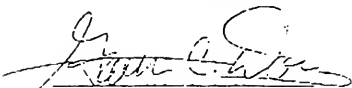
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 MRS. EDWARD D. W. HARDIN,
 ALFRED DAVID, PAT F. DAVIS,
 TOM GRIFFIN, GREG BROOKS,
 PAUL LEONARD, CINDY LEONARD,
 TOM BRENT, MRS. T. E. BRENT,
 GROVER RIDDLE, MARTHA RIDDLE,
 CARL ALEXANDER, PAT ALEXANDER,
 ELEANORE DIRKS, ROBERT TRUELSON,
 NORMA TRUELSON, RAY TROUTMAN,
 JO ANN TROUTMAN, GORDON STONE,
 MARTHA STONE, VITO CIRACI,
 SONIA CIRACI,

Plaintiffs,

v.

EDWARD PINE, RATTIKIN TITLE
 COMPANY AND MENTAL HEALTH -
 MENTAL RETARDATION ASSOCIATION,

Defendants.

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

ORDER OF NON-SUIT

ON THIS 9 day of November, 1992, came on to be heard Plaintiffs' Notice of Non-Suit as to the remaining Defendant, Tarrant County Mental Health-Mental-Retardation Services, and the Court having examined the pleadings on file herein is of the opinion that said Notice of Non-Suit is well founded and it is hereby entered and the above-numbered and styled case is hereby non-suited.

SIGNED this 9 day of November, 1992.

Thomas P. Hughes
 JUDGE, PRESIDING

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ORDER OF NON-SUIT
 Page 1

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Thomas P. Hughes
 District Clerk, Tarrant
 County, Texas

by Louise Walcott
 Deputy

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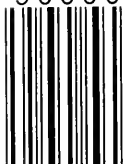
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